

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~259~~ 40

SANTIAGO AINSA, ADMINISTRATOR OF THE ESTATE OF
FRANK ELY, DECEASED, AND EDWARD CAMOU, J.
PELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED APRIL 12, 1900.

(17,714.)

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PELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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a UNITED STATES OF AMERICA,)
Territory of Arizona.)

Be it remembered that heretofore, to wit, on the 28th day of February, A. D. 1893, Santiago Ainsa, administrator and trustee, by his attorney, Rochester Ford, Esquire, filed in the office of the clerk of the court of private land claims at the city of Tucson, Arizona, a petition, in which said Santiago Ainsa, administrator and trustee, is plaintiff and The United States of America and Hugh H. Whitney are defendants; which said petition is in the words and figures, to wit:

1 UNITED STATES OF AMERICA,) ss:
Territory of Arizona,)

In the United States Court of Private Land Claims.

SANTIAGO AINSA, Administrator and Trustee,)

vs.)

THE UNITED STATES OF AMERICA and HUGH H. WHITNEY.)

Petition of Santiago Ainsa, administrator and trustee, for the confirmation of his title to the Agua Prieta grant or private land claim.

Comes now your petitioner, Santiago Ainsa, and respectfully represents that he is a resident of the city of Tucson, Territory of Arizona, and that he is the duly qualified and acting administrator, with the will annexed, of Frank Ely, deceased, by virtue of letters of administration bearing date the — day of November, 1892, issued to him by the probate court of the county of Pima, Territory of Arizona.

Your petitioner further represents and alleges that as such administrator and as trustee he is the owner in fee, holder, and possessor of that certain tract of land lying, being, and situate in the county of Cochise, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, commonly known and described as the Agua Prieta grant or private land claim, and more particularly hereinafter described.

Your petitioner further represents that he owns in fee, holds, and possesses said land under and by virtue of a certain instrument of writing now and hereinafter designated as and being a grant title, bearing date the 28th day of December, 1836, duly made and executed by and on behalf of the Mexican Republic, in the Republic of Mexico, under and by virtue of article eleven of decree number seventy, passed on the 4th day of August, 1824, by the sovereign constituent congress of the United States of Mexico, which article concedes to the States of the Republic of Mexico the rents or
2 revenues which by said law are not reserved to the general government, one of which revenues is the vacant lands within the respective States, which lands in consequence belong to such States; for the disposition of which lands under said decree the con-

stituent congress of the State of Sonora and Sinoloa passed numbered thirty, bearing date the 20th day of May, 1825, and decrees relative thereto by other successive legislatures, and decrees are embodied in sections three, four, five, six, and chapter nine of the organic law of the treasury, said numbered twenty-six, bearing date the 2nd day of July, 1831.

Your petitioner further represents that under and by such laws and decrees such proceedings as are hereinafter were thereunder lawfully and regularly had as that the government of the Mexican Republic, by its officers duly authorized, the laws aforesaid, duly and regularly, and for a good and consideration, to wit, the sum of one hundred and forty dollars and fifty cents, in the lawful money of the State, and good and valuable considerations in said grant title set described, did on the said 28th day of December, 1836, convey in fee to the citizens Juan, Rafael, and Ygnacio Elias of the presidio of Fronteros, the land hereinbefore mentioned more particularly hereinafter described.

Said citizens by petition of July 21, 1831, addressed to the able treasurer general of the State of Sonora, applied for the lands within the places and springs of Santa Barbara, Tacachi, Agua Prieta, Coabuyona, bounded on the north by the Chiricahua mountains, on the south by the lands of the

3 on the east by the mountains of Coabuyona, and on the west by the land of Ians. Commission was forthwith given to the citizen Joaquin Vicente Elias, a resident of San Ygnacio, to survey the said public lands and effect the measurement and appraisal of same in conformity with law, which commission was ordered and signed by the said treasurer general of the State. The foregoing commission was, on account of the inroads of the Indians, suspended until August 20, 1835, at which date the adjacent parties were summoned, and official surveyors, accountants, and interpreters were appointed, as required by law, and the survey was effected as follows: Taken as a center a lagoon or pool that is in the northern valley called Agua Prieta, the southern direction was taken, measuring and counting fifty-nine cords, which ended at a willow trees which are situated in the middle of the valley, and were to serve as a landmark until the parties erected monuments of masonry, as provided by law. Returning to the center, the direction of the north was taken, and, going up the valley, they measured one hundred cords, which ended on a very small hill fronting towards the east with the pass called "La Silla," and to serve as a landmark, and at which place a heap of stones was placed and a cross for a monument. Returning to the center, the direction of the east was taken, and towards it were measured one hundred and sixty-eight cords, which ended at a hill which is found on the right of the pass, through which runs the old road from Santa Cruz to San Bernardino, which was taken as a landmark and at which place a heap of stones was placed and a cross for a monument. Returning to the center, the direction of the west was taken, and towards it were mea-

counted two hundred and forty cords, which ended a little beyond where the little mountains seen in the said direction subside or end, on a long sloping red hill that has a ledge towards the south
 4 south, and fronting in the same direction with the highest point of the San José mountain, which hill was taken as a landmark and at which place a heap of stones was placed and a cross as a monument. Returning to the northern monument, there were measured and counted towards the east one hundred and sixty-eight cords, which ended near the Silla pass on a small hill that is to the right and near two larger ones, which small hill was taken as a landmark and at which place a heap of stones was placed and a cross as a monument. Returning to the northern monument, there were measured and counted towards the west two hundred and forty cords, which ended on a small hill in front of the cross monument in said direction, which hill was taken as a landmark and at which place a heap of stones was placed and a cross for a monument. From this place there were measured and counted towards the south eighty-nine cords, which ended on the cross monument of the west, and continuing in the said southern direction there were measured sixty cords, which ended at the foot of a high hill fronting towards the south with another hill that has a black crest and towards the east with a pass which has to the left two hills formed by red ledges, the foot of which high hill was taken as a landmark and at which place a heap of stones was placed and a cross for a monument. From this place there were measured and counted toward the east two hundred and forty cords, which ended at the cross monument of the south in the clump of willow trees spoken of before. From this place there were calculated one hundred and seventy-eight cords towards the east to the slopes of the first pass which is to the right of the point where ended the cross monument of the same direction, both points lying in a straight line along the foot of the Perrillo mountains. From this place there were calculated fifty-nine
 5 cords towards the north, which ended at the cross monument of the east, and the survey was thus concluded of the said lands of Agua Prieta, resulting in six short sitios.

There were further measured in favor of said petitioners and citizens Juan, Rafael, and Ygnacio Elias Gonzales eleven and one-half sitios and twelve and one-half caballerias composing the lands of Santa Barbara and Neidenibacachi, the survey, measurements, and other proceedings regarding which are fully set out in the same said grant and title papers; all of which lands embraced within the further measurements are, as your petitioner is informed and believes, located in the State of Sonora, Republic of Mexico.

The six and one-half sitios composing the survey of Agua Prieta were thereupon appraised, one at sixty dollars, as it has a small spring, and the remaining five and one-half at the rate of fifteen dollars each, as they are absolutely dry, and the eleven and a half sitios and twelve and a half caballerias composing the lands of Santa Barbara and Neidenibacachi were appraised, one at eighty dollars, another at sixty, and the rest at fifteen dollars each, which sums make a total of four hundred and thirty-two dollars and fifty cents, and at

such appraisement all of said lands *was* put up for sale for thirty consecutive days from June 4 up to July 4, 1836, but there were no bidders. The proceedings being finished, they were on July 7, 1836, forwarded to the treasury, which by decree of September 9 of said year, forwarded them to the solicitor of the treasury, who, on September 12, 1836, submitted his opinion reciting the petition presented to the treasurer general for said lands, the commission to execute the survey and appraisement of said lands and to make publication thereof, the result of said survey and the appraisement, and stating that there was

6 no obstacle to prevent the treasury from ordering the public auction by the board and issuing the proper title of transfer in favor of the interested parties or of the highest bidder. The treasury general being satisfied with this opinion of the solicitor, by decree of September 15, 1836, make order to proceed to the three public auctions on the same day and on the next two succeeding days of said month, and, there being no bidders, the said eighteen sitios and twelve and a half caballerias of land were auctioned off to the citizens Juan, Rafael, and Ygnacio Elias Gonzales, as appears by the record thereof in said expediente. On the same day it was ordered that the said Rafael Elias, for himself and in the name of his co-partners, should proceed to pay into the treasury the four hundred and thirty-two dollars and fifty cents, the value of all said lands, which he thereupon did. The proper certificate, signed by the treasury general in proof of the said payment, was thereupon joined to the expediente, and the said lands as measured and surveyed were in due form of law granted, given, adjudicated, and sold and conveyed by a complete and perfect title in fee to the said citizens Juan, Rafael, and Ygnacio Elias Gonzales and their heirs and successors, and the said title was thereupon recorded in compliance of law in the archives of the treasury general at Arispe, in the State of Sonora, on page 41, and the other side of it of the Book of Tomade Razon for the year 1836.

Your petitioner hereto attaches and makes a part of this petition, as Exhibit "A," a map of the land contained within the boundaries of said Agua Prieta grant.

Your petitioner further represents that the original or testimonio or first copy of said grant under which your petitioner claims, being the papers issued to said above-named citizens and grantees as their muniment and evidence of title, is not in the possession or

7 under the control of your petitioner; that some time prior to the year 1875 Jean Pierre Camou and Pascaul Camou, a firm doing business in the city of Guaymas, State of Sonora, Mexico, under the firm name and style of Camou Brothers, claimed to be the purchasers from and successors in interest to the said Juan, Rafael, and Ygnacio Elias Gonzales under the grant to them herein set out, and that on February 26th, 1875, under the provisions of the act of Congress approved July 22d, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof or supplemental thereto, the said firm of Camou Brothers, by their attorneys, V. E.

Howard and Sons, and their attorney-in-fact, G. Hill Howard, presented to the United States surveyor general of the Territory of Arizona a petition, and afterwards, on September 13, 1879, an amended and supplemental petition, each of which petitions prayed for the confirmation to said Camou Brothers of the lands known as Neidenibacachi, Agua Prieta, and Santa Barbara, alleging that the said lands had been sold and conveyed by a complete and perfect title in fee to the said Juan, Rafael, and Ygnacio Elias Gonzales, and that said Camou Brothers were the assignees of said grantees and the owners of said lands so granted.

Your petitioner further represents that accompanying said petitions and filed therewith in the office of the said United States surveyor general was the original or testimonio or first copy of the grant of said lands and being the same testimonio or first copy under which your petitioner claims, and by virtue of which he prays that the lands hereinbefore described and petitioned for may be confirmed to him.

Your petitioner further represents that thereafter, to wit,
8 on July 15, 1880, the said Pascaul Camou, by a letter of that date addressed to the said United States surveyor general, requested the return to him of the said testimonio or original title papers and of the other papers which had been filed on behalf of said Camou Brothers relative to the confirmation of said lands herein described, and that all of said papers were on July 21, 1880, returned by said United States surveyor general to said Camou, and that all of said papers ever since have been and now are under the control and in the possession of said Camou Brothers at said city of Guaymas, State of Sonora, and that therefore your petitioner cannot present or deliver or file herewith said original documents constituting and creating said grant.

Your petitioner on information and belief alleges that the lands known as Neidenibacachi and Santa Barbara, embraced in and granted by said grant, are not located in the Territory of Arizona, but are wholly located within the State of Sonora, Mexico, and that the said title papers were withdrawn by said Camou for this reason.

Your petitioner further represents that when said title papers were presented to said United States surveyor general they were examined, and it was found that the original expediente thereof was found in its proper place in the archives; that it was written on the corresponding stamped paper; that all the proceedings of survey, valuation, publication, and sale were all regular; and said expediente was reported to be unquestionably a genuine document, but your petitioner represents that no further report or recommendation or action had or has been taken by the said United States or by Congress or by any authorities of the United States relative to said grant.

Your petitioner further represents that said original testimonio or first copy of said grant under which your petitioner claims
9 was on the 25th day of April, 1867, by said Camou, delivered to John H. Archibald, who was then the duly and lawfully elected, qualified, and acting recorder of the county of Pima, Territory of Arizona, and that the same was on the first day of May,

1867, recorded by said recorder in his office of recorder of deeds of said Pima county, and your petitioner herewith files two certified copies of the record of said grant from the record of said recorder's office and files; also duplicate copies of the translation thereof into the English language.

Your petitioner further represents that he owns, holds, and possesses said lands under and by virtue of sundry mesne conveyances made to this petitioner by the said Juan, Rafael, and Yguacio Elias Gonzales and their grantees, which conveyances are on file and of record in the office of the county recorders of Pima and Cochise counties, Territory of Arizona, abstracts of which your petitioner will furnish if so required.

Your petitioner further alleges upon information and belief that there is no person or persons on or claiming said grant or any part thereof, otherwise than by license or permission of your petitioner or his grantors or predecessors in interest, except one Hugh H. Whitney, who is claiming, under a patent of the United States of America delivered to him April 16, 1890, the following-described land, to wit, northwest quarter of northeast quarter of section 15 and the west half of the southeast quarter and the southwest quarter of the northeast quarter of section 10, township 24 south of range 27 east, and except one person whose name is to this petitioner unknown, who is claiming or occupying as a squatter or occupant, and without claiming or asserting any title, a certain portion of section 18, township 24 south of range 26 east.

10 Your petitioner represents that the land which he prays to have confirmed to him, being that part of the said grant which is within the United States of America, is particularly described as follows, to wit: Parts of sections 7, 8, 9, 10, 11, 1, and 2 and all of sections 12, 13, 14, 15, 16, 17, and 18, township 24 south, range 27 east; also parts of sections 4, 5, 6, 7, 11, 12, and 14, and all of sections 7, 8, 9, 10, 13, 14, 15, 16, 17, and 18, township 24 south, range 26 east; also unsurveyed land which, if surveyed, would be described as follows, to wit: Parts of sections 1, 11, 15, 16, 20, 21, 29, 30, and 31, and all of sections 12, 13, 14, 22, 23, 24, 28, 27, 26, 25, 32, 33, 34, 35, and 36, of township 23 south, range 28 east; also all of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of township 24 south, range 28 east, containing an area of 43,499 acres, according to the said map heretofore filed.

Wherefore your petitioner prays that the validity of his said title may be enquired into and decided, and for such other and further relief as to the court may seem meet and proper in the premises.

ROCHESTER FORD,

Attorney for said Petitioner.

(Endorsed:) Case No. 5, F. 1. Santiago Ainsa, adm. & trustee, vs. United States & Hugh H. Whitney. Petition. Rancho Agua Prieta. Filed in the office of the clerk, court of private land claims, Feb. 28, 1893. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Here follows map marked page 11.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

12 And be it further remembered that on said 28th day of February, A. D. 1893, a summons was issued by the clerk of said court: which summons, with all endorsements thereon, is in the following words and figures, to wit:

13

Summons.

UNITED STATES OF AMERICA, }
District of Arizona, } ss:

In the U. S. Court of Private Land Claims.

SANTIAGO AINSA, Administrator and Trustee, etc., Plaintiff,	}	Petition Filed in the Clerk's Office This 28th Day of February, A. D. 1893.
<i>versus</i>		
THE UNITED STATES OF AMERICA and Hugh H. Whitney, Defendant.	}	

The President of the United States of America to the United States of America and Hugh H. Whitney, Greeting:

You and each of you are hereby notified that an action has been brought in said court by Santiago Ainsa, administrator, with the will annexed, of Frank Ely, deceased, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within 30 days after the service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Tucson, Arizona Territory, in said district, this 28th day of February, A. D. 1893, and of the Independence of the United States the 116th year.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk*.

14 [Endorsed:] Gen. No. — U. S. court of private land claims. Santiago Ainsa, adm. & trustee, plaintiff, *versus* United States *et al.*, defendant. Summons. Filed this 27th day of June, A. D. 1893. James H. Reeder, clerk, by R. L. Long, deputy clerk. Rochester Ford, of Tucson, attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, ss:

TUCSON, April 2, A. D. 1893.

I hereby certify that I received the within writ on the 29 day of February, A. D. 1893, and that I have personally served the same upon the said defendant, The United States, by delivering to Matt G. Reynolds, U. S. attorney for the court of private land claims, *and each of them* personally, a true copy of the within writ at the time and place as follows: As to — —, at — —, county of — —, on the — day of — —, A. D. 189—; *as to* — —.

After due and diligent search ascertained that the within-named Hugh H. Whitney is dead.

This writ therefore returned —, as the law directs, this — day of —; A. D. 189—.

R. H. PAUL, *Marshal*,By — —, *Deputy Marshal*.*Marshal's Fees.*

Service, — defendants, at \$2..... 8

Mileage, — miles, at 6c., going only.....

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Total.....

Paid by—.....

15 And be it further remembered that thereafter, to wit, on December 11, 1893, the court, sitting at Tucson, Arizona, made the following order:

In the Court of Private Land Claims, Arizona District.

SANTIAGO AINSA, Adm., etc.,	} No. 5. Agua Prieta Grant.
<i>vs.</i>	
UNITED STATES ET AL.	

On motion of Matt G. Reynolds, Esq., attorney for the United States, made in open court on this the — day of December, 1893, it is ordered that the plaintiffs in the above cause file with the clerk of this court at Tucson, Arizona, on or before January 15th, 1894, for the inspection of the attorney of the United States, all grant papers, evidence of title, and documents of whatever kind and nature which said plaintiff expect to offer in evidence in the above-entitled cause, with copies and translations of the same; also that said plaintiffs file with the clerk of this court on or before said date, to wit, January

15, 1894, for the purpose aforesaid, all original papers in — possession or under — control, purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Republic of Mexico, to the property described in the bill of complaint herein, or any part thereof, with translations or copies of the same. Also that said plaintiff file with the clerk of this court on or before said date, to wit, January

15, 1894, for the purpose aforesaid, a duly authenticated transcript of all records and documents, the original- of which are not under the control of said plaintiff, purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Mexican Republic, to the land described in plaintiff's bill of complaint herein, or any part thereof, which you expect to introduce in evidence. Also that said plaintiff's file with the clerk of this court on or before January 15, 1894, for the purpose aforesaid, all original deeds, with copies and translations thereof, and mesne conveyances, with copies and translations thereof, by which they and each of them claim title through and under the original grantee to the grant described in the petition of said plaintiff.

It is further ordered that the clerk of this court transmit by mail a duly certified copy of this order to Rochester Ford, Esq., attorney for plaintiff in this cause.

17 And be it further remembered that thereafter, to wit, on the 16th day of March, 1895, an answer was filed; which answer is in the following words and figures, to wit:

UNITED STATES OF AMERICA, *ss*:

In the Court of Private Land Claims, Tucson, Ariz., 1895.

SANTIAGO AINSA, Adm't'r and Trustee,	}	No. 5. Agua Prieta Grant.
Plaintiff,		
<i>vs.</i>		
UNITED STATES and HUGH H. WHITNEY,	}	
Defendants.		

Answer.

Comes now the United States and, for answer to the petition filed in the above-entitled cause, says:

That as to whether or not the said plaintiff is the administrator, to the will annexed, of Frank Ely, deceased, it has no knowledge or information sufficient to enable it to form a belief.

It denies that as such administrator or trustee he is the owner in fee or possessor of the whole or any part of the land described in said petition.

It denies that he holds or owns in fee or otherwise the land described in said petition under and by virtue of a grant title bearing date the 28th of December, 1836, made by the State of Sonora, in the Republic of Mexico.

It says that if the said State of Sonora at any time undertook to grant, convey, or otherwise dispose of said property it was without

warrant or authority of law and void for the reason that the said State of Sonora did not have or hold the title to the said property, but that the same was then and at all times prior thereto
 18 vested in the national government of the Republic of Mexico.

That whatever proceedings may have been had by the State of Sonora and its officials under the State laws were null and void and passed no title to said property against the national government in whom the title to said property was vested.

That said grant was alleged to have been issued and recorded on the 28th of December, 1836, at which time the State of Sonora as such had ceased to exist and was a municipal subdivision of the national government designated department, and its officials and territory under the exclusive jurisdiction of the national government were by law prohibited from disposing of the public domain in any manner until the national government should provide regulations therefor.

Further answering, the United States says that the claim that said grant or any portion thereof is located within the jurisdiction of the United States is untrue, but, on the contrary, the said claim is located within the Republic of Mexico, and is therefore not entitled to confirmation for the reason that the situs does not fall within the territorial jurisdiction of the United States nor of this court as defined by law.

Further answering, it says that under provisions of the laws of the Republic of Mexico in the year — Camou Brothers presented a claim to the national government of the Republic of Mexico for a confirmation of this grant, and that under and by virtue of an application of said national government said claim was investigated and surveyed according to the calls and description contained in the alleged grant of December 28, 1836, to Ignacio, Rafael, and Juan Elias Gonzales of what is known as the Agua Prieta grant, and that the same was surveyed and lies wholly south of the international boundary line within the Republic of Mexico.

That under said application said national government in the year 1882 confirmed the same and sold the demasias thereto, leaving a large area still existing between the north boundary of said
 19 grant and the demasias and the international boundary line, which said public lands have since been purchased from the national government by said Camou Brothers.

That said Camou Brothers now claim and own the whole and all of the land so granted by the alleged grant of December 28, 1836, and have received from the Republic of Mexico good and sufficient conveyances for the same, and wholly lying within the said Republic.

That the officers making said grant purported and attempted to act for and on the part of the State of Sonora, and that at a time when it had no authority to dispose of the public lands of the Republic of Mexico and when the State had ceased to exist as such.

That said grant was, prior to the treaty of Mesilla on November 25, 1853, by lawful authority of the Republic of Mexico, pending an

negotiation of said treaty, declared by competent authority to be null and void.

That the title was then and at all times had been in the national government and never in the State; that at the time of the negotiation of the treaty it had been and was declared by the Republic of Mexico, through competent authority, that the States never had the title to the vacant public lands, and that all alienations by them were void, and upon such declaration by the treaty-making power the property composed of a part of the State of Sonora was sold and transferred to the United States free from any claim on account of any action by the State or its authorities.

Wherefore the United States prays that this court may find that said grant lies wholly within the Republic of Mexico, also that it is not one which, under the laws of nations, the treaty of Mesilla, and equity, this court is bound to recognize, and it asks that said claim be rejected, and that said petition be dismissed as provided by law.

MATT. G. REYNOLDS,

U. S. Attorney.

(Endorsed :) Filed in the office of the clerk, court of private land claims, March 16, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

20

Amended and Supplemental Petition.

In the Court of Private Land Claims, Arizona District.

SANTIAGO AINSA, Trustee and Adm'r, etc.,

v.

THE UNITED STATES ET AL.

} Agua Prieta Grant.

Comes now Santiago Ainsa, trustee and administrator, etc., petitioner herein, and, by leave of court first had and obtained, files a corrected map made by Ignacio Bonillas, Esq., of the claim herein, and also files this his amendment and supplement to his petition, heretofore filed, praying for the confirmation of the Agua Prieta grant, and petitioner avers that prior to the treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by any one, and that neither the grantees nor their successors in interest had, prior to said treaty, any knowledge or notice that within the said monuments there was any excess of land over the area stated in said title papers, and petitioner avers that the grantees under said grant were under the laws of Mexico and the State of Sonora existing at the date of said treaty and for a long time prior thereto had been holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as own even after such overplus is shown, without other obligation than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and petitioner further avers that if this honorable court should decide that said sale as recited in said title papers did not, as petitioner avers it

did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained.

Wherefore petitioner now tenders to the United States of America and offers to deposit with the clerk of this honorable court for the United States of America the sum of six hundred dollars in gold coin of the United States of America as payment for all such over-
 21 plus or surplus of said lands in said grant, according to their quality and the price which governed when they were surveyed and appraised, and the further sum of two hundred dollars in like gold coin for the costs of ascertaining and determining the existence or non-existence of such surplus, and prays that this court order the clerk of said court to accept said sum as such tender, and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for such overplus or surplus, and prays that upon said payment this honorable court decree that petitioner is entitled to and is the owner of all of said tract of land, as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the possession and ownership of the whole of said tract, and petitioner prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and that petitioner be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises.

ROCHESTER FORD,

Attorney for Petitioner.

Filed in the office of the clerk, court of private land claims, Feb. 14, 1899.

JAS. H. REEDER, *Clerk,*

By R. L. LONG, *Deputy.*

22 And be it further remembered that afterwards, to wit, on the 14th day of February, A. D. 1899, the same being the 24th day of the January term, A. D. 1899, the said cause came on for trial.

Rochester Ford and S. M. Franklin, Esquires, appeared for the plaintiff, and W. H. Pope, Esquire, assistant to the U. S. attorney, appeared for the United States.

Mr. Vernon Beggs was appointed special stenographer for this session of the court, and sworn.

The plaintiff called Ygnacio Bonillas and W. E. Murphey, who were sworn and examined, after which the further consideration of the case was postponed until May 11th, 1899.

The following is the testimony, both oral and documentary, offered and introduced on said February 14th, 1899 :

23 UNITED STATES OF AMERICA, ss :

In the Court of Private Land Claims, Arizona District, January Term, 1899.

SANTIAGO AINSA, Administrator, etc.,	} No. 5. Agua Prieta Grant.
Petitioner,	
vs.	
THE UNITED STATES, Defendant.	

Transcript of Trial.

Appearances: Rochester Ford, Esquire, for the petitioner; Matthew G. Reynolds, Esquire, United States attorney, for the court of private land claims, and William H. Pope, Esquire, special assistant to the attorney general, for the United States.

On Tuesday, February 14, 1899, at ten o'clock a. m., this cause was called for trial, and the following proceedings were had therein :

24 (Agua Prieta.)

IGNACIO BONILLAS, a witness of lawful age, being produced, sworn, and examined on the part of the petitioners, testified as follows :

Direct examination by Mr. FORD :

Q. Please state your age and profession.

A. I am a mining engineer and surveyor.

Q. Please state your nationality.

A. I am a citizen of Mexico.

Q. Your knowledge of Spanish.

A. The Spanish language is my native tongue.

Q. What education have you had as a surveyor and engineer, and at what places?

A. I took a course in mining engineering and surveying in the Massachusetts Institute of Technology in Boston.

Q. What experience have you had in your profession, and in what line of duties and where?

A. I have had an experience of fifteen or sixteen years in surveying land grants both in this Territory and in the State of Sonora, Mexico.

Q. What official positions, if any, have you held in any of the States of the Mexican Republic?

A. I have held several positions in the State of Sonora; the principal one—I was inspector of mines for the district of Magdalena—State inspector of mines at first, and afterwards I was mining agent for the same district, appointed directly by the president of the Republic.

25 Q. Did you ever make a survey of the Mexican land grant or private land claim known as the Agua Prieta?

A. Yes, sir.

Q. When you made that what document, if any, did you have with you?

A. I took my notes from the testimonio or title papers which are on record in the office of the surveyor general of Arizona at this place.

Q. You made a map of that survey, did you not?

A. I did.

Q. State whether or not the paper which I show you entitled "Agua Prieta private land claim, surveyed and drawn by Ignacio Bonillas, October, 1895," is that map (handing witness map).

A. That is my map.

Petitioner then offered in evidence said map, which was marked "Exhibit P. 1." for identification.

Q. Proceed to state how you made that map and what points in the topography of the country you found, and describe them with reference to the description in the expediente of that grant.

A. I have with me (exhibiting paper) a report I wrote of that survey, and I started by making a translation of the original field-notes.

Q. This report you are examining was made from what?

A. From the original field-notes of my survey.

Q. At what time?

26 A. It was made in October, 1895.

Q. Do you now recollect that you knew at the time that it was a correct report of that survey?

A. Yes, sir; it is in every part.

Q. Proceed.

A. (Reading:) I went to the Agua Prieta grant on the first of October, 1895, for the purpose of making a survey of it. Before going I engaged the services of Francisco Valencia, of the town of Oputo Sonora, to accompany me as guide, as he has been for many years familiar with the country hereabouts. I also consulted with Don Ramon Estrado, of the neighboring town of Fronteras, who is a well-known guide, and with Don Ciriaco Anguro, commander of the custom-house guards at Lamorito, concerning the points mentioned in the title papers of this grant as to where the monuments were originally established.

By Mr. POPE: You are now reading from your own report?

A. Yes, sir; the initial or starting point in the survey of this grant is the well-known pond called Agua Prieta, meaning black water, from which the grant has derived its name. It is situated in the thalweg of the Agua Prieta valley, known in Arizona as Sulphur Spring valley, at about three or three and a half miles south of the international boundary. From the initial point I went down the valley in a southerly direction to the place known as Las Sauces, so called from the fact that at this point in the valley there is quite a growth of willows, where the underground currents come to

the surface. These willow trees form quite a noticeable feature in the valley, as for miles around no others are to be found, and I am
27 informed that from the earliest recollections of old inhabitants of the neighborhood such has been the case. I found no monument exactly at the clump of willows, as none could stand the floods that flow periodically over the valley; but a short distance to the east, at the border of the valley, I found the old monument known as the south Cruz monument of the grant. Starting again from the initial point, I went up the valley in a northerly direction and searched carefully for the north Cruz monument. I spent three days with three assistants looking for this monument. The Puerto de la Silla was pointed out to me from the valley, and my search extended both north and south of a line running westward from said pass at right angles from the course of the valley. I found no monument to answer the calls of the title papers, my opinion being that the original monument has been swept away by the floods, as the country is very flat in the locality where it must have been placed, judging from the description of the title papers. The description of the point where the east Cruz monument was placed is so precise and clear in the original field-notes that I encountered no difficulty in identifying it. I inquired of people from Fronteras and Santa Cruz who traveled forty or fifty years ago over the road leading from the latter town, then a presidio, to San Bernardino and from a man who was a soldier among the escort of the Mexican Boundary Commission while making the original survey of the international boundary, and the answer is uniformly the same, that the road leading from Santa Cruz to San Bernardino
28 crossed the Ceniza or Perrilo range of mountains through the Gallardo pass, north of the well-known butte called Gallardo. The same road is traveled today, as it is the most direct route between the two places mentioned and the one which offers less difficulties to travelers both on vehicles and on horseback. Led by my guide, I followed this old road from the creek in the center of the valley in an easterly direction to Gallardo pass, where the international boundary monument No. 82 is located. From there I went to the top of a high hill which rises to the right or in a southerly direction, where I found a large old monument of loose stones, at the foot of which a cross formed of the same material can be clearly defined. The position of the west Cruz monument is also described with accuracy and clearness in the testimonio of this grant. Standing at Agua Prieta, the initial point, the north end of the small range of mountains known as the Naidenibacachi is observed towards the west, and at the same time the sharp, bold peak of the San Jose mountain rises in the same direction, but much farther west. The general geological formation of the Agua Prieta or Sulphur Spring valley at this latitude consists of grey and bluish limestones, the Naidenibacachi mountains being formed of the same calcareous rocks. A very short distance to the west of the northern extremity of said mountains the grey and bluish aspect of the ground changes to a reddish color, and an examination of the rock reveals a contact of

the calcareous rocks with the red sandstone that underlies them and which overlies trappean igneous red cyanite.

Hereupon the Government interposed an objection that the witness answering a question by reading a lengthy report was
29 unfair and an improper method of examination.

Objection overruled.

A. (Continuing reading:) Just where this contact of the rocky formations occurs there is a red hill sloping towards the north, having on its summit, which is the southern part, a ledge of rocks resembling an eyebrow, which is the literal meaning of the word *ceja* used in the title papers of the grant in describing this hill.

By Mr. POPE: What corner is that?

A. That is the west center monument.

By Mr. POPE: You are going west from the center monument?

A. Yes, sir (continuing reading). On the crest of this hill I found a large old monument, very much like the east Cruz monument, even in the circumstance of having at its foot a well-defined cross of loose stones. From this monument the highest peak of the San Jose mountains bears south eighty-eight degrees forty minutes west, or northwest as the papers call for. The northeast corner monument I also found at the place described in the title papers. The Puerto de la Silla was pointed out and described to me with all precision possible. It is the first pass north of Gallardo, and is so called from the perfect outlines of a saddle formed by the profile of the northern extremity of the Perrillo mountains, now known as Swisshelm mountains, the horn of the saddle being formed by College peak, also known in the locality as Silver peak. Standing at the northeast corner monument, above described, and looking towards the west in a direction at right angles to
the course of the valley, two or three small hills can be
30 seen near the foot of the Mule mountains. I followed the course of the valley, which is twenty miles wide at this point, and searched the tops of the small hills before mentioned, finding the northwest corner monument upon one of them. These little hills are formed entirely of limestone, rising in the plain about a mile from the foot of the Mule mountains, there being no others to the north and for a considerable distance to the south. In order to look for the corner monuments in the southern end boundary of the grant, I went to the south Cruz monument at Las Sauces, from where I observed that in a westerly direction at right angles to the course of the valley lies the southern extremity of the Naidenibacachi mountains, which forms a pass with some high hills lying south therefrom. I went to this extremity of the mountains and looked for the southwest corner monument, as this places answers the calls of the title papers, and at the foot of a high hill I found a large, old monument of loose stones, there being towards the south a hill with a black crest, towards the east a pass that leads to Cabullona, to the left or north side of which rise two hills ending abruptly in reddish bluff (bluffs) formed by the disintegration of the

strata of red sandstone. This monument answering in every respect the recitals of the testimonio, I located it as the southwest corner of the grant. There is but one pass south of Gallardo in the Ceniza or Perrilo mountains that answers the calls of the title papers as to the location of the southeast corner monument, and that is the Ceniza pass. So I went to it and on the slopes immediately south of the pass I found the southeast corner monument from which the eastern foot-hills of the range of mountains run in the direction of the east Cruz monument situated at Gallardo pass. I considered the identification of the monuments of the Agua Prieta grant perfectly established.

By Mr. POPE: You have just concluded reading your report; all your testimony up to the present time has been reading this report?

A. Yes, sir.

Q. Please take the map which you have identified as made by you and testify now as to the topography of the country. What is there at the place you have marked here as Agua Prieta center monument?

A. That is a small pond which is in the Sulphur Spring valley known in that country to Spanish-speaking people as the Agua Prieta valley, which means black water.

Q. What is there at the point you have marked south Cruz monument, Los Sauces?

A. That is a clump of willow trees growing in the valley there.

Q. Is there any other clump of willow trees near that place?

A. It is the first clump of willow trees that you meet coming down the valley from the center monument from the Agua Prieta, and I could not see any others for miles around.

Q. Going north from the center monument, did you or did you not find the termination of the measurement stated to end on a very small hill fronting towards the east of the pass called La Silla?

A. I went up the valley from the center monument looking for that north center monument, but I could not find a monument at all.

Q. What is there at the place you have designated on this map as east Cruz monument and what is the topography of that country?

A. The description in the title papers is that the east center monument was placed on a high hillock that is to the right of the road that leads from Santa Cruz to San Bernardino. The old overland road seems to be a very well-known road to everybody, and marks of the road, in fact, are still there, and just as one crosses the pass, a little depression formed in the Perrilo range of mountains, to the north of the hill, which is very well known also under the name of College peak, I found this high hillock with the monument on the top of it, which answers perfectly to my mind the calls of these title papers.

Q. What is this Puerto del Gallardo you have marked here?

A. That is a pass in the mountains, between the Swisshelm and Perrilo mountains, at this place near this high mountain Gallardo.

Q. Where, if you know, is the next pass south of that pass in

that range of mountains which would be available for a main traveled road?

A. For a wagon road south of Gallardo I do not know of any until you reach the southern extremity of these Perrilo mountains. There are little depressions south of Gallardo, and there is one particular one known as Ceniza pass, which has a trail or bridle path going across it.

Q. Do you know whether the old overland road passes just north of this east center monument as designated on your map?

33 A. Yes, sir; that is where the old overland road passes, and I took particular pains to inquire about that, and everybody told me that was the old road, and it had always passed there.

Q. Going from the center monument in a westerly direction, and stopping at the place which you have designated on your map as west Cruz monument, please designate the topography at that point.

A. This red sloping hill with the ledge of rocks on the top of it is situated at the north end of the Naidenibacachi mountains. It is close towards the south of the road coming from Agua Prieta valley to Lamorito custom-house.

Q. What is true as to the color of the hill there?

A. This red hill is very noticeable because it is close to the contact of the red sandstones and the grey or bluish limestones. It is a noticeable feature, and this ledge that is on the top of it is in the shape of an eyebrow, and is formed by a stratum of these red sandstones.

Q. What is the topography at the point which you have designated on your map as the northeast corner? What, if anything, did you find at that point?

A. The northeast corner is on a very small hill at the Puerto de la Silla. I do not know what the name of that place is at the present time.

Q. What does that mean?

A. It means the Saddle pass, and I was told that the reason it was named that way was from the perfect outlines of a saddle in the mountains right where the Swisshelm mountains end towards the north.

34 Q. State whether or not the mountains present any such outline.

A. They do, very distinctly, and it is a very noticeable feature, and the horn of the saddle is formed by a high peak called College peak, and from the horn it slants down and curves just like a saddle.

Q. What is there at the northwest corner?

A. It is upon a little limestone hill about a mile from the foot of the Mule mountains.

Q. Were you or were you not personally at this place?

A. I was personally out upon all of these places and made the search originally for the monuments before proceeding with the survey.

Q. Have you or have you not an independent recollection of the facts about which you were testifying?

A. I have a perfect recollection of everything, and I have my original notes with me.

Q. Does this map which you have identified correctly represent the results of your survey?

A. Yes, sir.

Q. State whether the objects designated on this map as the various monuments correctly answer the description of the expediente.

A. They do in every particular, to my notion.

Cross-examination by Mr. POPE:

Q. You live in Nogales?

A. Yes, sir.

Q. How far is this tract of land from Nogales?

35 A. I do not know the distance.

Q. Is it a mile?

A. It is more than a mile.

Q. How much more than a mile?

A. It may be 100 or 150 miles; I do not know the distance.

Q. What is your best judgment? Is it one hundred or 150 miles?

A. I think it would be nearer 150.

Q. Do you know where the San Bernardino ranch is?

A. Yes, sir.

Q. This is out in that same country—quite near there?

A. Yes, sir.

Q. Your investigation was made on this visit in October, 1895?

A. Yes, sir.

Q. Most of your surveying in Mexico has not been in that section?

A. Not most of it.

Q. So that your acquaintance with that country was largely derived from your investigation at that time?

A. My knowledge at that time or my present knowledge?

Q. Your present knowledge.

A. Yes; my present knowledge is derived from this investigation and other surveys I made in that vicinity.

Q. What other surveys did you make there?

A. I made a survey of the Cuchuverachi ranch, of the Cienega ranch, of the Rusvalta, a survey of the Batepito, a survey of the town lands of Fronteras, which are to the south of this, and from
36 Fronteras down, almost everything clear down to Arispe; almost every grant, ranch, and town all around that country.

Q. You have done most of your surveying in the Republic of Mexico out in that direction?

A. Yes, sir.

Q. This Cienega, is that the Cienega de Heredia?

A. I surveyed that too.

Q. Where is that?

A. That is a considerable distance to the west; that is between Santa Cruz and San Pedro.

Q. That is something like 100 miles southwest of this?

A. I should not think it would be as much as that.

Q. How much?

A. Probably 60 miles.

Q. That is in the Republic of Mexico?

A. Yes, sir; close to the boundary line.

Q. What is the extent of that ranch?

A. The Cienega Heredia is said to be $3\frac{1}{2}$ sitios.

Q. You say this map is correct?

A. Yes, sir.

Q. All the objects mentioned thereon?

A. Yes, sir.

Q. This Agua Prieta, is that property located on this map?

A. Yes, sir.

37 Q. What about the international boundary line? Is that properly projected on the map?

A. It is; the triangulation is connected with monument No. 82, and from there it is projected.

Q. Is that the monument of the present survey?

A. That was monument No. 19 in the old Emory survey, and it is now marked No. 82. It is exactly the same monument; a stone and mortar monument built at the site of the old one.

Q. What is the character of the monument?

A. It is a pyramidal monument, built of stone and mortar, and it is fully eight feet high.

Q. So your understanding is that this is the monument on the present boundary line?

A. Yes, sir; it is at the site of the old boundary, too.

Q. Did you find any monuments going further west?

A. Yes, sir; I found a number of other monuments and I located a number of other monuments along the line; I did not represent them on the map, because I did not find them necessary.

Q. What is the course of the international boundary line?

A. About east and west—it is correctly located there (pointing to Exhibit P 1).

Q. What is the distance from the center monument you have located here to the international boundary line?

A. A little over three miles, about 18,000 feet.

Q. That is the distance so far as you can determine?

A. Yes, sir.

38 Q. What is the character of the Agua Prieta creek?

A. It is dry there. There are water pools there in the rainy season and the water rises about where the clump of trees is, but practically it is dry land.

Q. This is practically a dry valley?

A. Yes, sir; at present they have wells with windmills on them to get water.

Q. What does the expediente give as the distance from the center monument to the north center monument?

A. The distance is 100 cordeles, or one league.

Q. That is about two and five-eighths miles?

A. About 2.6 miles.

Q. And the distance from the center monument, as you have located it, to the international boundary line is greater than a league?

A. Yes, sir.

Q. That is, measured in a direct line north and south?

A. Measured along the valley.

Q. What would be the measurement directly north and south?

A. About that; there would be no difference, not any remarkable difference.

Q. Can you scale it exactly from that point, and, if so, state what the distance is from that center monument due north to the international boundary line?

A. It is about 18,000 feet, a little over three miles.

Q. You made no attempt in this survey to make it conform to the measurements indicated in the expediente?

39 A. To measure the distances given in the expediente?

Q. Yes, sir.

A. No; because if I went just a league north from the Agua Prieta I would just about come in front of where the east center monument is, because the east center monument is just at the boundary line, just a very short distance south of it; the north center monument is said to have been established at a point in the valley in front of the Puerto de la Silla, consequently I had to go to a point in the valley fronting that pass to look for that monument.

Q. What is the distance from your center monument to your north boundary line at the point where it intersects the valley?

A. About 48,000 feet; about nine and one-half miles.

Q. And the measurement given in the expediente is one league, or 2.6 miles?

A. Yes, sir.

Q. Do you remember the distance given in the expediente from the center monument to the south center monument?

A. It is 59 cordeles.

Q. That is between a mile and a mile and a half?

A. Yes, sir.

Q. What is the distance upon your map?

A. Nearly six miles; 30,000 feet.

Q. What is the distance on your map from your center monument to your west center monument?

A. About nine and a half miles.

40 Q. What is the call for that distance in the expediente?

A. Nearly two and a half miles.

Q. What is the distance from your center monument to your east center monument?

A. About seven and a half miles.

Q. What is the distance given in the expediente?

A. I believe it is 168 cords.

Q. How much is that in miles?

A. About four and a half miles.

Q. I wish you would project on this map from your center monument just where 168 cords going east would end. I want protracted on your map the line running perpendicular to the general course of that stream and eastward from your center monument to the length of 168 cords.

A. I designate that point by the letter "A."

Q. I wish you to project on that map, corresponding to the general course of the valley, one hundred cordeles going north from the center monument.

A. I designate that point by the letter "B."

Q. Then this survey of these outboundaries, according to the measurements you have given, were without regard to the distances called for in the expediente?

A. This survey of the outboundaries was made so as to take in the natural points given in the expediente.

Q. But without regard to the distances named in the expediente?

41 A. Without regard to the distances.

Q. What is the total area of this tract which you have included within the outboundaries here?

A. The total area is 163,797.48 acres.

Q. What is the area given in the expediente of this Agua Prieta grant?

A. It is six and a half sitios; that would be 28,199.66 acres.

Q. In this survey you did not survey that other portion of the tract given as Naidenibacachi and the Santa Rosa tracts?

A. No, sir; this survey was simply for the Agua Prieta.

Q. You did not include these other ranchos named in the expediente?

A. No, sir.

Q. Did you say that there was any monument at the Agua Prieta?

A. At the initial point?

Q. Yes, sir.

A. No; my understanding is that the pond itself was established as the monument.

Q. You found no monument there?

A. There is a point there that has been used for a flag station; in fact, I put a flag there myself. There was a monument there, but it was an old monument.

Q. Which did you measure from?

A. I took the pond itself.

Q. Did not measure from this monument?

42 A. No, sir.

Q. How wide is the pond?

A. I do not know. It may be 100 feet wide.

Q. And how long?

A. It may be 150 feet long. I did not take any measurements.

Q. Did you make any connection of this survey with the international boundary line?

A. I connected the east center monument with it.

Q. What is the distance from the east center monument to monument No. 82 on the international boundary line?

A. 1,604.9 feet.

Q. What is the course from the east center monument to this international boundary monument No. 82?

A. North 19 degrees 18 minutes 38 seconds east.

Q. Did you make any connection at any other point on this survey with the boundary line?

A. I believe I did. I do not know that I figured out any connection. I know I located some other monuments by intersections. It was unnecessary for me to figure any of it and I did not.

Redirect examination by Mr. Ford:

Q. What experience have you had in surveying grants in the State of Sonora and Territory of Arizona similar to this one?

A. I have been doing that ever since I have been a surveyor.

Q. State whether you have surveyed many or few.

43 A. I have surveyed a hundred if I have surveyed one.

Q. And in surveying them have you had copies of the original notes of the survey made by the Spanish and Mexican officials?

A. Yes, sir; generally. If I did not have the title papers in the field, I had notes I took from the original documents. I always like to do that.

Q. State whether or not the courses and distances between natural monuments correspond with the actual distances between the points, as developed by subsequent survey.

A. I never found one to agree. Generally the distances are all the way from double the distance to twenty times the distance in those old surveys.

Q. What is true, then, as to the actual area included between the natural objects described in the notes of the survey and the stated area?

A. It is proportionate to the excess in the distances, of course.

Q. Do you know of any cases, and, if so, state them, where it is found that the notes of the Spanish and Mexican surveys are scientifically and mathematically correct as to the courses and distances and small fractions of a foot?

A. I never found them to be so.

Q. From the experience which you have gained from surveys made by you, are you prepared to state whether this discrepancy between the actual contents and the estimate area is exceptional or otherwise?

44 A. It is more in conformity with the rule than any exception. In this case the area is said to be six and a half sitios, and it turns out to be thirty-seven and a half sitios. I have found a great many discrepancies in other surveys. In the Alamo de Sevilla, a grant whose demasias has been confirmed by the Mexican government to the claimants, the grant was for four sitios and it contains in all 28 sitios.

Q. Did you survey that grant?

A. I did.

Q. Did you find the natural objects called for in the title papers?

A. Yes, sir. I found the monuments called for in the title papers, and I could mention a dozen or twenty more if you allowed me to consult my note books.

Q. This that you are speaking of, do you know of your personal knowledge in the field?

A. I know because I made the surveys myself, and I know that titles have been issued to the claimants for the excess.

Hereupon the Government objected to this testimony as to demasias because it is a matter of record, and moved that the same be stricken out.

No ruling by the court.

Q. Going north from the center monument the distance called for in the expediente to the point marked by you "B" on this map, state how that point would be with reference to being north
45 or south of the east center monument.

A. It would be south of west from the east center monument.

Recross-examination by Mr. PORE:

Q. How much of this area that you speak of as included within these outboundaries is in the State of Sonora, Mexico?

A. 95,267.43 acres.

Q. How much in the Territory of Arizona?

A. 68,530.05 acres.

Redirect examination by Mr. FORD:

Q. Do you know whether the point which you have taken as your east center monument is the same as monument No. 19 of the Emery survey of the Mexican boundary line and monument No. 82 of the recent Barlow survey of that boundary line?

A. It is not the same point. The east center monument is to the south of that place—I have given the course and everything—about 1,600 feet from that monument.

Q. Your east center monument is where, with reference to monument No. 19?

A. It is south 19 degrees 18 minutes 38 seconds, west 1,604.9 feet from monument No. 82 of the boundary line. The same monument was monument No. 19 of the old boundary.

46 WALTER E. MURPHY, a witness of lawful age, being produced, sworn, and examined on the part of the petitioners, testified as follows:

Direct examination by Mr. FORD:

Q. You are chief clerk in the office of the surveyor general of Arizona?

A. Yes, sir.

Q. What is this map which you have produced here (referring to

a tracing he holds), purporting to be a map of the topography on each side of the international boundary line? Where did you get that paper?

A. From the official records of the office, and it purports to be the map showing the boundary line between the United States and Mexico of the Emery survey.

Recess until two p. m.

By Mr. PORE: The Government desires that Mr. Bonillas protract on the map of his survey, introduced in evidence here as Exhibit P. 1, a figure corresponding exactly to the measurements set forth in the expediente of this grant; first, with the eastward and westward lines of that figure run perpendicularly to the general course of the valley indicated on his map; secondly, with the eastward and westward lines run due east and west.

Hereupon, at the motion of the Government, further hearing of this case was suspended for the present term and the case
47 continued to the next term of court, the court so ordering.

I, Vernon Beggs, acting official stenographer of the court of private land claims, do hereby certify that the above and foregoing is a full, true, and correct transcript of all the proceedings had in this cause upon the trial of the same had at the January, 1899, term of the court of private land claims held in Tucson, Arizona, as disclosed by my shorthand notes taken at and during the trial of said cause.

VERNON BEGGS,
*Acting Official Stenographer of the
Court of Private Land Claims.*

St. Louis, Mo., February 25, 1899.

48 [Endorsed:] C. No. 5, F. 24. Agua Prieta. Testimony.
Filed in the office of the clerk, court of private land claims,
Mar. 6, 1899. Jas. H. Reeder, clerk, by R. L. Long, deputy.

49 PLAINTIFF'S EXHIBIT 1, MAP.

(Here follows map marked page 49.)

50 The further hearing of this cause was resumed before the court on the 11th day of May, A. D. 1899, at Tucson, Arizona, and the same not being concluded, it was continued on the 12th and 15th days of May, when the evidence closed. On May 31st, 1899, on motion of Rochester Ford, Esquire, Eduardo Camou was ordered made a party defendant, and by leave of court filed a deed from J. P. Camou to Eduardo Camou.

After argument by counsel for the respective parties the case was submitted to the court for decision, and was by the court taken under advisement.

The following is the testimony, both oral and documentary, offered and introduced:

51 In the U. S. Court of Private Land Claims, January Term, 1899, at Tucson, Arizona.

SANTIAGO AINSA, Trustee and Admin- istrator, <i>vs.</i> UNITED STATES.	}	No. 5. Agua Prieta Grant.
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On May 11th, 1899, the above case was called for trial.

Mr. FORD: I offer in evidence a duly certified copy from the treasurer general of the State of Sonora of the original expediente and record of the Toma de Razon, which was filed in this court March 16, 1895 (Plaintiff's Exhibit A). Also translation of the same (Plaintiff's Exhibit C).

I also offer in evidence a copy of a letter from Pasqual Camou to the surveyor general of the Territory of Arizona, dated June 15, 1880, for the purpose of showing that Camou had deposited with the said U. S. surveyor general the original title of the tract known as Naidenibacachi, Agua Prieta, and Santa Barbara, and for the further purpose of showing his request to the surveyor general that the said Agua Prieta title paper should be returned to him, Camou, and it is stipulated between counsel for the Government and the petitioners herein that the said title, original paper, was by the said surveyor general returned to Camou (Plaintiff's Exhibit D).

Mr. POPE: It is admitted that the original title paper in the case now on trial is in the possession of Juan Pedro Camou, in the city of Guaymas, State of Sonora.

EDWARD CAMOU, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. State your full name.

A. Edward Camou.

52 Q. Where do you reside?

A. Guaymas.

Q. You are the son of Juan Pedro Camou, are you not?

A. Yes, sir.

Q. Have you been requested by me to bring up to this court the original title paper of the Agua Prieta grant?

A. Yes, sir.

Q. State whether or not you have done so, and what effort, if any, you have made to produce that paper.

A. He said, well, in the first place I went to Guaymas; I spoke to my father about it when I got back from the rancho.

Q. Did you not tell me that he did not want to produce it because it was against you?

A. Yes, sir; he is afraid to let it be broke.

Q. Was it not for that reason that your father refused to bring it?

A. Yes, sir; and it was very old.

Q. He did not want to trust it out of his possession?

A. Yes, sir.

Mr. POPE:

Q. You said that you did not speak to him about it?

A. I did not tell him about it because he was afraid to use it, even myself never used it; it was a very old paper; he never looks at it on account that it is very old; it is all getting to pieces.

Mr. FORD:

Q. Do you remember that he was requested by me to produce it at the trial?

A. Yes, sir; I do.

Cross-examination by Mr. POPE:

Q. What is your father's full name?

A. Juan Pedro Camou.

Q. Who is Juan Pasqual Camou?

A. My brother-in-law.

Q. Who was Jose Camou?

A. Cousin.

Mr. FORD: We offer in evidence duly certified copy from the recorder of deeds of Pima county, Arizona, purporting to be the original title paper of the Agua Prieta grant and containing the endorsement filed April 25, 1867, at 5 o'clock p. m., by the hand of Camou (Plaintiff's Exhibit E). Also translation of the same document (Exhibit F).

Also deed from Santiago Ainsa *et al.* to S. M. Franklin, dated December 24, 1886 (Plaintiff's Exhibit G).

Also deed from S. M. Franklin to Robert C. Ely, dated January 3, 1887 (Plaintiff's Exhibit H).

Also deed from Rafael, Carlos, and Manuel Elias to Robert C. Ely, dated February 3, 1887 (Plaintiff's Exhibit I).

Also deed from Plutacho Elias *et als.* to Robert C. Ely, dated February 8, 1887 (Plaintiff's Exhibit J).

Also deed from Jesus Elias *et als.* to Robert C. Ely, dated February 8, 1887 (Plaintiff's Exhibit K).

Also deed from Robert C. Ely and wife to Frank Ely, dated July 30, 1887 (Plaintiff's Exhibit L).

Also deed from Angel H. Varela *et als.* to Harvey L. Christie, dated April 2, 1888 (Plaintiff's Exhibit M).

Also deed from Jesus E. de Serrano to Harvey L. Christie, dated April 23, 1888 (Plaintiff's Exhibit N).

Also deed from Harvey L. Christie and wife to Santiago Ainsa, trustee, dated January 24, 1883 (Plaintiff's Exhibit O).

Also copy of appointment of Santiago Ainsa as administrator, with the will annexed to Frank Ely, deceased, dated February 18, 1892 (Plaintiff's Exhibit P).

Also the deposition of Lola Elias, dated October 12, 1892 (Plaintiff's Exhibit Q).

Mr. POPE: It is stipulated and agreed between the parties that the deposition of Lola Elias, filed in this court February 15, 1894, may be considered by the court as evidence for the plaintiffs to the same extent as though the witness were present in court and testified to the facts stated in said deposition. It is further stipulated that the parties named as grantees in the Agua Prieta grant now on trial are respectively the same parties named as grantees in the following grants now pending before the court of private land claims: San Rafael del Valle grant, Babocomori, San Pedro, and San Juan de la Boquillas y Nogales.

We also offer in evidence a certified copy by the U. S. surveyor general of Arizona, dated April 3, 1899, of that portion of the plat of the survey of the international boundary line between the United States and the Republic of Mexico, situated between 109 degrees and 12 minutes and 109 degrees and 32 minutes west longitude, as surveyed under the direction of William H. Emory, U. S. commissioner, and Jose Salazar y Larregui, Mexican commissioner in 1855, as on file in the office of said U. S. surveyor general (Plaintiff's Exhibit R).

Also copy of letter from Binger Hermann, Commissioner of the General Land Office, Washington, D. C., dated July 6, 1897, addressed to the U. S. surveyor general, Tucson, Arizona (Plaintiff's Exhibit S).

Mr. POPE: We offer in evidence testimonio or expediente of denouncement of the tract of land situate in the district of Hermosillo and known as Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, and Lo de las Mesteñas. Said copy is certified to by the clerk of the district court, at Guaymas, State of Sonora, as a true and faithful copy of the original proceedings on file in that court, such certificate is dated March 8, 1899, and the maps attached thereto (Defendant's Exhibit A).

Mr. Ford objects to it because it is irrelevant and immaterial and not binding on the plaintiff for the reason that he was no party thereto. We also desire to tender in evidence certified copy of the proceedings of denouncement of a tract of land adjudicated to Josefa Rodriguez, Maria Bustamante y Salazar, and Refugio Miranda, said tract of land being situated between the tract mentioned in the expediente just offered in evidence and the inter-

national boundary line; also the maps attached to said expediente and forming a part thereof (Defendant's Exhibit B).

Same objections.

We also offer in evidence Exhibit B, offered in evidence in the San Rafael del Valle case, being that of Camou *versus* The United States, and being a copy of a deed of sale under contract to resell made by Jose Juan, Jose Maria, and Manuel Elias, and the mother of the same to Messrs. Camou, dated July 25, 1862 (Defendant's Exhibit C).

Same objections.

We also offer in evidence Exhibit C in the San Rafael del Valle case, Camou *versus* United States, being declarations of Jose Maria Elias, Manuel Elias, Guadalupe Peres de Elias, and Bernardina L. de Elias, dated Guaymas, March 17, 1869 (Defendant's Exhibit D).

We also offer in evidence titulo in the following four cases, filed in the court of private land claims: San Rafael del Valle, Babocomori, San Pedro, and Rancho de las Boquillas y Nogales (Defendant's Exhibit D 1).

HENRY O. FLIPPER, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. Give your profession and your present occupation.

A. Civil engineer, and employed at present as special agent
56 of the Department of Justice.

Q. For how long have you been a civil engineer?

A. Since 1877.

Q. I will get you to state to the court the source of your education and your profession of civil engineering?

A. I was educated in civil engineering at the United States Military Academy at West Point.

Q. And since that time what has been your profession?

A. Since that time I have been occupied as a civil engineer while in the army, and since I have been special agent of the Department of Justice since 1893.

Q. What is your present residence?

A. Nogales, Arizona.

Q. To what extent have you had any familiarity with surveying in the Republic of Mexico?

A. I was engaged in surveying public lands in Mexico from 1882 up to 1893 in the States of Chihuahua and Sonora.

Q. To what extent have you surveyed grants or concessions from the Mexican government in the Republic of Mexico?

A. I surveyed 19 out of the 22 counties in the State of Chihuahua and 4 in the State of Sonora.

Q. And as to land grants or concessions in the States of Sonora and Chihuahua what experience have you had?

A. In the survey of private land grants, included in the survey of public lands.

Q. I will get you to state if you are familiar with the Spanish language.

A. Yes, sir; I am familiar with the Spanish language. I began

the study of it at West Point in 1873, and have made a study of it ever since.

Q. To what extent are you familiar with the expedientes, Spanish documents and records of the Republic of Mexico?

A. I examined a great many both at Chihuahua and Hermosillo during the last eleven years during which I have been occupied in these surveys.

Q. That was in connection with the survey of public lands
57 and private property in the Republic of Mexico and the survey of such lands on the ground according to the calls of each expediente?

A. Yes, sir. Also every tract of public lands that I had anything to do with it was necessary to examine the titulos and expedientes and make abstracts of the archives.

Q. And in connection with your employment as special agent of the Department of Justice for this court have you had occasion to examine a great many archives?

A. Yes, sir. I have examined the archives at Hermosillo and other places, and made translations and copies of them.

Q. Have you had occasion to examine or translate, or both, the expedientes just offered in evidence by the defendant as Exhibits A and B of the archives from the district court at Guaymas?

A. I have, sir. I have known of these documents as far back as 1886. I went to Guaymas for copies, and made translations of them.

Q. These copies of the translations tendered in evidence were made by you?

A. Yes, sir. I subsequently made translations of them from the originals furnished from that office.

Q. These are the translations?

A. Yes, sir; they are.

Q. Are they correct?

A. They are correct to the best of my belief.

Q. You said you went on the premises of this Agua Prieta grant. I will get you to state when you went and with whom.

A. I went on the Agua Prieta grant with Mr. W. H. Pope and Mr. W. M. Tipton, with drivers, reaching the point known as the Agua Prieta on the 26th of last April, about noon—this last month, last April, last preceding April.

Q. Had you ever been in that section of country before?

A. I had.

Q. At what time?

A. I was there in 1886; but at that time I did not go over the entire grant.

58 Q. How did you cross it?

A. I went from San Bernardino and came up the San Bernardino river and crossed to the Agua Prieta, then down to Cabulona and Fronteras.

Q. On this last trip, or on either trip, did you become acquainted with what is known as the Agua Prieta?

A. On this last trip; yes, sir.

Q. I will get you to describe to the court what is the point known as the Agua Prieta at the present time.

A. It is a dry marsh; it is evidently a lake; on the edge is a spring on the west side of the river and near the edge of the hills. I would judge that in the rainy season it is quite a lake, probably 200 feet long by 100 feet wide.

Q. Did you hear the testimony of Mr. Bonillas at the last term of this court about the location of Agua Prieta? Is that the same point at which you were?

A. I believe that to be the same point that Mr. Bonillas testified to.

Q. Did you make any observations as to the distance of the Agua Prieta, its length or width?

A. I should judge it to be about 200 feet by 150 feet wide; it is of considerable length.

Q. Did you find a pile of stones near it?

A. There is a small loma near this lake with a pile of stones.

Q. Did you make any measurement how far this pile of stones is from the edge of the lake itself?

A. About a chain; possibly a little less than a chain; 66 feet; of course it depends upon what point of the lake you take.

Q. Did you make any measurements of the distance from this Agua Prieta, from this monument that you mentioned, or collection of stones, on the north side of it, to the international boundary line?

A. Yes, sir; I measured the distance from that monument, 59 pile of stones, to monument number 86, I think it is, on the international boundary line.

Q. I will get you to state what is the distance from this monument on the north side of Agua Prieta to the international boundary line.

A. Four and four-hundredths miles; 155 cords; this is the distance from the pile of stones on the north side of the lake known as Agua Prieta to monument number 86 on the international boundary line between Mexico and the United States.

Q. Have you the data telling the course passed between these two points?

A. I have; the course is north 41 degrees 37 minutes west, magnetic.

Q. What would be the course true meridian?

A. North 29 degrees 35 minutes west, true.

Q. From your observation made at that time are you able to state to the court the distance from this monument at Agua Prieta due north to the international boundary line?

A. Three and fifty-hundredths miles plus.

Q. Did you have with you on this investigation on the ground the copy of the original expediente in this Agua Prieta?

A. I did have such copy of the original expediente in this Agua Prieta case.

Q. I will ask you to state what the distance given in the expediente — from the center point of the grant to the north center monument.

A. I can only speak from recollection; 100 cords, to the best of my recollection.

Q. You can refer to the expediente; what is the distance there in miles or leagues?

A. 100 cords is equal to one Mexican league and two and six-tenths English miles.

60 Q. Suppose you run a line, then, due north from the Agua Prieta the distance named in the expediente; I will ask you to state whether or not that line would reach the international boundary line.

A. A line run 100 cords from the Agua Prieta measured due north would fall short of the international boundary line nine-tenths of a mile—that is, it would end south of the line nine-tenths of a mile.

Q. I will ask you to look at the expediente and state what the measurements from the center monument in the other directions are.

A. To the south they measured 59 cords which end in a thicket of willows; 168 cords were measured east from the same center; 240 cords were measured west from the same center.

Q. Now suppose there were laid off on the ground a line having as its measurement from the Agua Prieta due north 100 cords and thereupon laid off upon that line a figure having the measurements stated in the expediente, as you have just read it, east, west, and south, I will ask you to state whether or not such a figure having measurements as I have stated, its east and west lines due north and south and its north and south lines due east and west—such a figure would, or any part of it, fall within the United States.

A. Such a figure would not fall within the United States.

Q. It would end entirely below the international boundary line?

A. It would end entirely south of the international boundary line.

Q. Did you make an investigation for the purpose of locating, if possible, the natural object or artificial object that is given as the north center monument of this grant?

A. I did.

Q. Where is the north center monument mentioned in the grant?

61 A. The course to the north was observed and the 100 cords would terminate on a very small hillock fronting on the east what is called Saddle pass; the north center monument is described as being on a very small hillock fronting on the east what is called Saddle pass.

Q. Going north from the Agua Prieta, did you find such a monument located in the valley of the Agua Prieta?

A. I did.

Q. I will get you to describe to the court just the character of that monument and its location with respect to its natural surroundings.

A. This monument stands on the summit of a lomita on the east side of the valley of the river, and measures 70 inches from east to west and 60 inches from north — south, and is about 1 foot high; it is made from small stones and earth; this monument has the appearance of having fallen down, having been squashed down.

Q. What is its appearance, age or otherwise, based upon your

familiarity with this character of monuments in your investigations in the Republic of Mexico?

A. Well, I judge it to be an old monument from the fact that grass and weeds are growing up through the stones.

Q. Where is this monument located with respect to the international boundary line?

A. It lies to the south of the international boundary line fifty-four-hundredths of a mile, and also nearly due north from Agua Prieta.

Q. At what distance from Agua Prieta?

A. It would be two and ninety-six-hundredths miles.

Q. Have you any data from which you can show the court what its course is from the location of this monument from the Agua Prieta?

A. The data from which I determine, I think it is nearly due north from Agua Prieta.

Q. How would it vary in degrees east or west?

A. Very little; probably less than a degree.

62 Q. I will get you to ascertain after you go off the stand.

A. Very well.

Q. Suppose you run a line from the Agua Prieta lake in the direction of this monument which you have testified to as conforming to the description of the north center monument and measure off north such a line 100 cords, would it or not reach this north center monument?

A. It would not, because the distance from the Agua Prieta to this north center monument is two and ninety-six-hundredths miles (100 cords are 2.6 miles), so that the 100 cords would not reach this monument by thirty-six-hundredths of a mile.

Q. Suppose that the 100 cords laid off as I have just described on a line running from the Agua Prieta to this north center monument, and there were laid off the other lines with the distances stated in the expediente, the north and south line perpendicular to these other lines, would such a figure, or any part of it, fall within the United States of America?

Objection to the question as assuming that this little pile of rocks is the north center monument; it is leading in that respect.

The COURT: Hypothetical questions may be based on the evidence it tends to prove; with that fact to establish it. You may answer the question.

A. Having the measurement of 100 cords, such tract would be wholly within Mexico.

Q. I believe you stated you had with you the original expediente of this grant?

A. I had a copy of the original expediente; yes, sir.

Q. So far as the description of this north center monument is concerned given in the expediente, I will ask you to state whether
63 or not in your opinion that north center monument conforms in the description to the north center monument given in the expediente.

Objection because he ought to prove the topography of the country with reference to the calls stated in the expediente.

Question withdrawn for the present.

Q. Did you have with you the expediente of the denouncement of the demasias before the district court by the Messrs. Camou tendered in evidence as defendant's exhibit, marked A?

A. I did.

Q. Did you at that time consult the survey made and shown by that expediente and the plat attached thereto?

A. I did very carefully.

Q. By whom was that survey made?

A. My recollection is it was made by Florencio Rosas.

Q. Does Mr. Rosas in that survey attempt to locate an object conforming to the north center monument of this original expediente?

A. He does.

Objection to the survey of Mr. Rosas because it is not binding on this claimant and because it is not proved to be correct.

Q. In your investigation of that country did you identify the natural object called Gallardo hill?

A. I did. I already knew that hill from former visits to this section, and at this time again had it pointed out by Mr. Jesus Montaño.

Q. Who is he?

A. Mayordomo of the Agua Prieta ranch.

Q. Juan Pedro Camou's mayordomo?

A. Yes, sir.

Q. Where does the Gallardo hill lie with respect to the international boundary line?

A. It lies south of it, and south of international monument number 82.

Q. Did you find international monument number 82?

A. I did. International monument number 82 is near the
64 foot of the north slope of Cerro Gallardo.

Q. Did you make any observation of the course from this north center monument as to which you have testified to the summit of this Cerro Gallardo?

A. I did; I found the course from this monument to the summit of Cerro Gallardo north 79 degrees 3 minutes east, magnetic, which is the course given by Mr. Rosas in his survey of the demasias of this tract.

Q. Do you remember by whom the survey of the public lands as set forth in defendant's exhibit marked B, tendered in evidence, was made?

A. I am not sure; I think it was made by Mr. Molera.

Q. I will ask you to look at it and refresh your memory as to that.

A. No, sir; it was made by Francisco Dublé.

Q. Did you at the time you were investigating this north center monument and visiting it have with you the certified copy of the expediente just tendered in evidence as Defendant's Exhibit B?

A. I did have that certified copy.

Q. I will get you to look at that and state whether that states the course from the Gallardo peak to this lomita selected by him as his north center monument.

A. This gives it north 79 degrees east.

Adjourned until 2 p. m. today.

65

2 P. M.

Q. Mr. Flipper, I will get you to look at this plat and state whether or not—and indicate on it where this north center monument which you have testified to is located on that plat.

A. This plat shows the triangulation I made last April to determine the distance from Agua Prieta to monument number 86 on the international boundary line; it also shows the position of the north center monument of the Agua Prieta grant according to Rosas. That monument is nearly due north from the center monument of the Agua Prieta.

Q. Does that plat show the location of the monument found by Mr. Tipton and yourself and which you have testified to as the north center monument of this tract?

A. It shows the monument found by Mr. Tipton and myself and which we identified as being the monument located by Mr. Rosas, the north center monument of the Agua Prieta.

Q. I will get you to state as to whether or not that plat which you hold in your hand correctly represents the triangulations made by you and the other observations made by you last month.

A. It does so correctly represent them.

Q. Have you the river indicated there at any point?

A. I have the river indicated at three points; at one point due east, magnetic, from Agua Prieta; at a second point due east from a point marked Flag D, and a third point east of a point marked Flag F.

Q. Refer to these places by letters.

A. The first place is indicated by the letter H; the second place, the letter K, and the third place, the letter L.

Q. How does the river run down the Agua Prieta valley with respect to the surface of the ground?

66 A. It is very narrow in most places, and runs in a valley to the Agua Prieta, and it is more of a gulley than a river; at places only three or four feet wide and at other places 15 or 20 feet; it is a deep gully; sort of a gulch.

Q. Any lomas on either side of the valley?

A. Yes, sir; in many places they are very close to the river and other places some distance from it.

Q. Did you testify as to the distance of this north center monument which you have referred to from the river?

A. The north center monument of Mr. Rosas, I do not know its distance from the river.

Q. Approximately its distance from the river and in what direction?

A. It is east from the river, probably a quarter of a mile.

Q. Where does it lie with respect to the road going up and down the valley, east or west of that road?

A. It lies east of the road.

Q. The point you have designated as Agua Prieta I understand that to be the monument to which you have testified as being immediately on the north side of Agua Prieta pond?

A. Yes, sir; that was the starting point in all the measurements that I made.

Q. And the names given of these various objects, indicated on your map, are the names of these objects as indicated by you and as measured by you on the ground?

A. They are.

I tender this map in evidence (Defendant's Exhibit E).

Q. The original expediente in this case referred to the north center monument as located on a very small hillock fronting on the east with what they called Saddle pass. You are familiar with the Spanish equivalent of this, are you not?

A. Puerto de la silla.

Q. I mean of the Spanish equivalent in the expediente what was a very small hillock?

A. Lomita muy pequeña.

67 Q. I will get you to state whether or not this monument is not on the Lomita peak.

A. This is on the summit of a lomita muy pequeña.

Q. Does this monument fall south of any pass to the east?

A. It does; there is a pass also due east.

Q. Where is that pass located with respect to the Gallardo peak or cerro as to which you have testified?

A. There is a pass immediately north of Gallardo cerro and another south of it. Through each of these passes passes a wagon road.

Q. And this monument, in what direction is it from the most northerly of these two passes?

A. It is almost due west.

Q. Do you know what is known as—what has been testified to as College peak by Mr. Bonillas and his map filed by him and his testimony taken at the last session of this court?

A. Yes, sir.

Q. Mr. Bonillas shows on that map that College peak is about 50,338 feet north of the Gallardo cerro?

A. About that; I think that distance is correct, though I have not measured it.

Q. This north center monument to which you have testified as being identical with the one shown by Rosas in his survey, is that monument in front of College peak?

A. Well, that depends on the meaning of front of; it is to the southwest; it is hard to tell which is the front of a mountain.

Q. Is it directly opposite this College peak with respect to the cardinal course?

A. It is not; it is southwest from that peak.

Q. Have you the course from this north center monument to the College peak?

A. I think I have. College peak bears north 29 degrees two minutes east, magnetic, from this north center monument of Agua Prieta, as taken by Mr. Rosas.

Q. And what is the variation?

A. The variation as found by me is 12 degrees 2 minutes east, magnetic course.

Q. Did you go to this puerto or pass that is on the north side of the Gallardo peak?

A. I did go to that pass.

Q. Where is international monument number 82 with respect to that pass?

A. The international monument number 82 is in that pass; it is at the foot of the north slope of the Cerro Gallardo; there is a wagon road not far from the cerro.

Q. Where is that wagon road going through that pass?

A. On the north side of Gallardo; the road evidently has not been used for some time; there is a fence across it near that point; the road is passable; there is a fence across it now; it has not been used for some time.

Q. What is the character of the country as to being rough or suitable for a wagon road? Did you go up to this monument in a vehicle?

A. I went to within a few yards of it, probably 30 or 40 or 50 yards possibly, and then encountered this fence.

Q. Do you know a puerto on the south side of the Gallardo peak?

A. There is a pass on the south side of Cerro Gallardo.

Q. What kind of a wagon road is that through there, the road that is now used?

A. It is a good road.

Q. Did you go over that road?

A. I did; I drove over that road.

Q. From what place to what place?

A. From Agua Prieta to San Bernardino and back.

Q. Have you any information as to what the name of the pass south of this Gallardo peak is in that community or that vicinity?

69 A. Such information as I obtained from the people in that country. The mayordomo of the ranch, Mr. Jesus Montaño, told me that the pass south of the Cerro Gallardo was known as Gallardo pass. I spoke to him particularly about this and he repeated the information.

Q. Is that the pass where the main wagon road now runs?

A. It is the pass through which the main wagon road now runs from San Bernardino westward.

Q. You had the expediente of denouncement of this tract with you on this trip by the Messrs. Camou, I believe you said?

A. I had a copy of it.

Q. You had the certified copy which was tendered in evidence here in this court?

A. Yes, sir; I did.

Q. There is laid down what is called on this survey by Mr. Rosas a cerro called en el puerto de la silla. What does puerto de la silla mean?

A. Pass of the saddle.

Q. Has it any other meaning?

A. It also means chair, and chair is the proper meaning, and saddle is the derivative meaning.

Q. Are you able to point out the place laid down on this plat by Mr. Rosas as the puerto de la silla?

A. Yes, sir.

Q. Where is that?

A. It is the pass I have described as the Gallardo pass.

Q. What is the character of this Gallardo cerro or peak?

A. It is a large cerro, very prominent; has a mass of rock on the top of it; conspicuous; it is visible for a long distance, both from the east and the west; it stands practically by itself, having a pass on each side of it.

Q. And on the north what is the configuration of the country?

A. Going northwest from the Gallardo cerro there is a chain
70 of hills or cerros which are known as Swisshelm.

Q. This Cerro Gallardo stands practically alone, then, and towards the north, the pass intervening, there is the beginning of the Swisshelm mountains which lie considerably up north?

A. Yes, sir; going north.

Q. Did you notice where the Perrillo mountains are as laid down on that map?

A. I did in 1886; and again I found out last April from the mayordomo, Mr. Jesus Montañó.

Q. Are these two mountain ranges, the Perrillo and the Swisshelm, on the north connected with the Cerro Gallardo?

A. I should judge the Cerro Gallardo is more intimately connected with the Swisshelm.

Q. What is the character of the country between the Cerro Gallardo and the Perrillo mountains on the south?

A. There is a series of hills, more or less detached from the main range running between the Perrillo mountains and the Gallardo.

Q. What is the general course of the Perrillo mountains with respect to the Swisshelm mountains and this Cerro Gallardo?

A. The Perrillo mountains run from southeast to northwest; the Swisshelm mountains run from the southeast in the same general direction; they run more nearly from south to north than do the Perrillo mountains.

Q. The Perrillo mountains are in what general direction from the main range?

A. From this Cerro Gallardo they lie west, south of west.

Q. And at what distance would you say?

A. Well, I do not know really; a mile and a half or two miles about.

Q. Did you go down to the end of these Perrillo mountains?

A. I did.

Q. Did you find the puerto de la Ceniza mentioned by Mr. Bonillas in his testimony and laid down on his map?

A. I did.

71 Q. Is the puerto de la Ceniza located about as Mr. Bonillas has it on his map; I mean practically as to the general calls of this tract?

A. Yes, sir; I should say so.

Q. Did you go through the puerto de la Ceniza?

A. Yes, sir. I walked nearly half a day through it.

Q. What is the character of the puerto de la Ceniza as to accessibility to travel?

A. There is a wagon road going into it from the pass on the south side of Cerro Gallardo; good, well-traveled road. The road has been washed out and is not passable at the present time, though wagons have been recently over it. I went through the pass and followed the trail of the wagon that had recently been over that; it is rough towards the mouth of the pass.

Q. Now, between this puerto de la Ceniza that you have identified and the pass immediately south of the Cerro Gallardo, is there any pass of any kind?

A. About two miles, possibly 2 miles and a half south of the Cerro Gallardo, there is another pass, known as puerto de la Misa.

Q. Did you go over that pass?

A. I drove through that pass over what is evidently a much-used road.

Q. Did you stop for any length of time at all in the pass?

A. The first time I went over the pass I did not; but I came back to the pass and camped at the point of the agua de la Misa.

Q. There is water, then, in this pass?

A. There is water in this pass; yes, sir.

Q. Were you able to find, by inquiry, any water in the pass to the north of that—that is, south of the Gallardo cerro?

A. There is, as far as I saw, no water north of that, between that and the Cerro Gallardo, and, from what the mayordomo told me, there is no water there.

72 Q. As to the pass laid down as Ceniza pass, is there any water in that country?

A. There is no water in the pass—that is, I saw none.

Q. I wish you would describe this wagon road more in detail, both as going through puerto de la Misa, both as to its entrance on the west side of the mountains and its egress on the east side, as to whether or not there is more than one road, and as to the evidences of travel now and in the past or likely to be traveled.

A. I went to the puerto de la Misa from the eastern side, and up to the place where the water is. There is but one wagon road coming from the east. There were several horse trails coming from the east into that point. From the water hole there is a wagon road going nearly south. This wagon road goes to puerto de la Ceniza. It joins the road there coming to the puerto de la Misa. It is the

only road I saw there. There is a road going to agua de la misa or puerto de la misa. There are several roads turning off from this road going south from the puerto de la Ceniza that come again into the puerto de la misa. The main road goes over the misa pass out in the valley of the Agua Prieta. The main road goes in a southerly direction to the headquarter ranch of Mr. Camou at Cabullona and on to the town of Fronteras. Wagons have gone over this road in a westerly direction to the point known as Agua Prieta in the valley. *This is a trail showing that one or two wagons had passed over it.*

Q. There are other roads that you have mentioned on the east side of this place on the main road going to Fronteras. On the west side were there evidences of that having been traveled?

A. They were well-traveled roads, and from the appearance they are traveled now frequently. They are in good condition.

73 Q. Tell as to the character of the country through that pass as being suitable for a road independent of artificial means of improvement.

A. The puerto de la misa is an excellent place for a road; there are no obstacles of any kind to pass over there; the pass is open; it might be called a narrow valley instead of a pass.

Q. You have referred to a road which ran on the north side of this Cerro Gallardo which is now in disuse. Have you any information as to the history of that road as to how it happened to be built or opened, as shown by the map Mr. Ford introduced here, showing the international boundary line at that place?

A. Yes, sir; the road was built by Colonel Cook; my recollection is that he was sent out by the Secretary of War, Jefferson Davis, to build a road to the Pacific coast in 1851 and 1852; possibly before that; I know this by reading of it in books.

Mr. FORD: We object to this as hearsay; the books are the best evidence themselves.

The COURT: Sustained.

Mr. POPE: We will supply the books.

Q. I believe you said the road going from this puerto de la misa westward goes to Fronteras?

A. That road does go to Fronteras.

Q. Is there any road from Santa Cruz to San Bernardino at this time by way of Fronteras?

A. There is.

Q. Do you know of Fronteras as having been a post of the Mexican army or of the armies of the Spanish nation?

A. It is so described in this title as a presidio or garrison for soldiers.

Q. Between Santa Cruz and San Bernardino is there any other presidio located, or that was located that far north in ancient times?

74 A. None that I know of; I have no information of it.

Q. What was the character of that country north of Fronteras as to Indian hostilities?

A. It has been overrun by Indians; it has been dangerous for

people to go in there; it is especially so stated in these very title papers.

Q. What is the definition of this Spanish word puerto?

A. Pass, door.

Q. This Puerto Gallardo that you have mentioned, is that within your idea of the definition of a puerto?

A. It is a puerto.

Q. This puerto de la misa that you have referred to, is that a puerto?

A. That is also a puerto.

Q. At the pass indicated in this expediente from Guaymas, introduced as Exhibits A and B, and called puerto de la silla, in the vicinity of this are there any lomas?

A. There are.

Q. Are there any small lomas?

A. There are small lomas and large ones on both sides of both passes.

Q. Any small lomas which are near higher lomas?

A. There are.

Q. What is the character of the country near the pass as to having lomas, few or many?

A. There are quite a number of lomas on both sides, north and south, on the west side.

Q. Did you find any lomas in the vicinity of the other monuments?

A. I found a monument on the summit of a large loma close to Cerro Gallardo and between the two passes near the international monument.

Q. A line running eastward to that loma or other lomas on the west side of the Cerro Gallardo, from the north center monument you have testified about, would such a line or not fall entirely within Mexico?

A. Both of these points being in Mexico, a line running joining them would necessarily be in Mexico.

Q. Then a straight line running from the north center monument indicated by Mr. Rosas on his survey to the north east corner indicated by him, would or would not it lie entirely within the Republic of Mexico?

A. Such a straight line would be entirely within the Republic of Mexico.

Q. In the vicinity of this puerto de la misa, I will ask you to state whether or not there are any lomas.

A. As you come out of the pass going westward there are any number of lomas lying to the west; also in the mouth of the pass, but outside of the pass.

Q. Are there any lomas lying to the right of this pass as you go eastward?

A. There are; there are lomas to the right of them and lomas to the left of them.

Q. Are there any lomas to the right of the road coming from the west going through that pass?

A. There are ; yes, sir ; and in the immediate vicinity of that road north of the pass.

Q. How are these lomas located with respect to the falda of the Perrillo or Ceniza mountains ?

A. They are near the foot of that range.

Q. What is the falda ?

A. Foot of the range.

Q. Are these at the foot of this range ?

A. They are near the foot.

Q. At the foot and near it ?

A. Yes, sir.

Q. On which side of the mountains, the east side or the west side of the Perrillo mountains ?

A. West side.

Q. I believe you have testified as to being at the north center monument as identified by Mr. Rosas ?

A. Yes, sir.

Q. Now, from that north center monument looking westward, what is the topography of the country ?

A. There is a chain of hills of various sizes running from the north end of the Naidenibacachi range up into Arizona to a point east of the Mule mountains ; the hills at the north end of this range are small.

Q. Then the Naidenibacachi is laid down by Mr. Bonillas
76 as the west boundary ?

A. As part of the west boundary.

Q. Taking the hills north of the Naidenibacachi and following these hills, what would you say would be the natural west boundary for a tract such as this ?

A. The western boundary would be the Naidenibacachi mountains or range.

Q. Looking over the north center monument of Mr. Rosas due west, are there or not any cerritos that come into the range of vision ?

A. There are a number of small cerritos in that locality.

Q. Did you take the telescope of your instrument and point it over such hills ?

A. I did ; yes, sir.

Q. Does that or not rest upon these cerritos ?

A. The line indicated by the telescope rests upon these cerritos.

Q. The title papers speaks of a small cerro upon which the northwest monument was ordered to be located ; do you remember the Spanish of that ?

A. I do not know ; no, sir.

Q. I will get you to turn to the Spanish expediente at that point, the point described as the northwest corner—un pequenito cerrito ; turning your instrument in the same course from the north center monument westward from the northeast corner to the north center corner, as shown by Mr. Rosas' course, do you recollect the instrument resting on any particular natural object ?

A. I remember being at that monument and setting the instru-

ment on Cerro Gallardo, then turning the telescope over and the telescope cuts this range near its northerly extremity.

Q. Did you make an observation by which the telescope went right across the Cerrito Pequeño?

A. I see that I have no such memorandum here.

Q. Well, is there at the north end of this range a cerrito pequeño?

A. There is a small cerrito at the north end of this range.

77 Q. Did you from the international monument take an observation such as would enable you to state whether or not this range of hills that is seen in the horizon from the north center monument looking westward and being the first range up in that direction goes beyond the international boundary line?

A. I did make such an observation; being at monument number 86, I turned the instrument true west, and the line indicated that this range of hills terminated on the American side of the line; came a short distance into the United States.

Q. True west is on the international boundary line?

A. Yes, sir.

Q. Where does such a course fall with respect to this cerrito?

A. It falls just north of the highest point of this cerrito.

Q. So that a line run from the north center monument to where would it go?

A. The small cerrito at the end of this range would lie wholly in Mexico; such a line would lie entirely within Mexico.

Q. I will ask you this question: From your investigation then with this expediente and the calls of the grant as indicated by the expediente, would you or not say that this grant may be located according to the calls of that expediente entirely within the Republic of Mexico?

Objection to the question because it is a conclusion; that is a matter that the court can draw.

Overruled.

A. I believe the loma identified by Mr. Rosas as the north center monument is where the original north center monument was; I believe that the puerto de Gallardo is what was known at that time as the puerto de la silla; I believe that the Cerrito Pequeño was the northwest corner. These three points fix the north line of the grant. A line run through these three points would be in
78 Mexico; if this north line of the grant is in Mexico, the grant itself must be in Mexico.

Cross-examination by Mr. Ford:

Q. Will you please take the Bonillas map? Have you seen that before or a copy of it?

A. I have seen this one.

Q. Have you examined it?

A. I have; yes, sir.

Q. Where is the center point of the Agua Prieta survey, as stated by the original title papers?

A. I understand it to be at Agua Prieta.

Q. Is that point correctly designated on this Bonillas map?

A. It is as I understand it; yes, sir.

Q. Where is the south center monument of the Agua Prieta grant, as stated in the original title papers?

A. At a point where there is a clump of willows, marked on this map as Los Sauces.

Q. How far is this from Agua Prieta, as stated in the title papers?

A. 59 cords.

Q. As laid down on the Bonillas map of the Agua Prieta, the point called Los Sauces, do you know whether or not there is such a clump of willow trees there?

A. At Los Sauces, there is a clump of willow trees there.

Q. Is that clump properly designated on the Bonillas map?

A. To the best of my belief, yes, sir; I have no doubt of it.

Q. That clump is set in the middle of the valley?

A. It is.

Q. At the center of this valley about which you have testified, is there any other clump of willow trees there?

A. There is not.

Q. How far did you say it was from the point called the Agua Prieta to the international boundary line on a due north line?

A. Three and fifty-hundredths miles.

79 Q. State how far it is as shown on the Bonillas map, if you are capable of doing so from the scale.

A. This map shows it as being about three miles.

Q. Can you not state more accurately than about?

A. Well, it is three miles and three hundred feet.

Q. You want to say, do you, as an expert surveyor, that that map on that scale shows the distance from the Agua Prieta to the international boundary line to be three miles and three hundred feet?

A. As indicated by this scale, yes, sir. No; I thought this scale was one inch to the mile. $30\frac{1}{2}$ times 600 is 18,300; that divided by 5,280 will give you the number of miles; exactly 3.46 miles.

Q. Bonillas makes it 3.46 and you make it 3.50, a difference of .04?

A. Yes, sir.

Q. Where is the east center monument of this grant, as stated in the original title papers?

A. Una loma alta, on a high hillock which is to the right of the pass where passes the old road from Santa Cruz to San Bernardino, where I ordered a pile of stones placed.

Q. Where is San Bernardino with reference to the international boundary line, north or south?

A. The old ruins of San Bernardino are south of the international boundary line.

Q. How far south of it?

A. O, less than a quarter of a mile, I should judge.

Q. Where is Santa Cruz with reference to the international boundary line, north or south?

A. South of it.

Q. About how far?

A. Santa Cruz is about seven miles south of the line.

Q. I show you a tracing of the international boundary line survey with the old road from Santa Cruz to San Bernardino; will
80 you mark with your pencil on there where there is any high hills, if there are any, which is the point on the right of the pass through which passes the old road from Santa Cruz to San Bernardino?

A. There are several of them there. I want to say that this does not correctly represent the topography out here.

Q. Do you find a high hillock on the road to the pass through which passes the old road from Santa Cruz to San Bernardino?

A. There is a high hillock on that road, but there is no high hillock on that map; I want to be understood as saying that there is a high hillock to the right. There are two roads from Santa Cruz to San Bernardino; which of these two roads do you refer to?

Q. The one marked on the international boundary line.

A. There is a high hillock to the right of that road; it is very plain.

Q. Please state whether that high hillock is correctly represented on the Bonillas map.

A. It is correctly represented on that map.

Q. The name of that hillock is Gallardo peak?

A. That is not a hillock; that is a cerro; I have not been talking about that.

Q. Where is the west center monument of this grant as stated in the expediente?

A. A little beyond where the range which is seen in that direction ends on a high hill; on a high hill which has a brow on the southern side and fronting toward the same with the highest point of the San Jose mountains.

Q. As laid down on the Bonillas map, is there at the end of that line a long red hill on a ledge towards the south and fronting in the same direction with the highest point of the San Jose mountains?

A. I did not go to that point.

Q. What is the southwest corner of this grant as stated in
81 the expediente?

A. It is described here as being at the foot of a high hill, fronting on the south another hill, which has a creston, and on the east with a pass, which has to the left two hills formed by some red crestons.

Q. Going from the clump of willow trees called Los Sauces, with the course and distance marked on the Bonillas map, is there a high hill fronting towards the south, with another hill that has a black crest, and towards the east with a pass which has to the left two hills formed by some red ledges?

A. I do not know. I did not go there.

Q. You did not go to that point?

A. No, sir.

Q. What is the southeast corner monument of this grant, as stated in the expediente?

A. It is the foot of the first pass, which is to the right of the point where is the cross monument of the said course, both points being in a straight line at the foot of the Perrillo mountains.

Q. Going from the south center monument of this Bonillas map, the course and distance marked on the Bonillas map, did you find on the termination of that line a pass which is also in a line with the cross monument on the east of this grant?

A. I found that pass; yes, sir.

Q. In which direction is this pass from the cross monument on the east?

A. It is nearly in a line with it north and south.

Q. Is this pass along the foot of the Perrillo mountains?

A. When I said that this point was nearly in a line with it north and south, I meant that the cross monument indicated on this map, not the cross monument as indicated in the title papers.

Q. Is that true?

A. That is true.

82 Q. Did you see the Perrillo mountains?

A. Yes, sir.

Q. These are the same mountains which you have testified about, terminating in the Swisshelm mountains, do they?

A. As I understand, yes, sir; they terminate in a part of the Swisshelm mountains.

Q. These Perrillo and Swisshelm mountains are on the same range?

A. It is the same range.

Q. They are all the same range?

A. They are simply names of sections of it.

Q. It is a continuation of the range that you have mentioned; the Perrillo mountains are south of the international boundary line?

A. That I do not know; that is what I question, because part are south of the international boundary line.

Q. It is described as the same range on that map?

A. No doubt of that; yes, sir.

Q. There are no Swisshelm mountains in the Territory of Arizona designated on that map as the Perrillo mountains?

A. Not that I know of; no, sir.

Q. What is the northeast corner monument of this grant as designated in the title papers?

A. Measured from the north center monument to the northeast monument, 168 cords would end close to the puerto de la silla on a small hillock which is to the right and close to two others that are higher.

Q. Going from the Agua Prieta designated on the Bonillas map, the course and distance there would be in a straight line from that point to the point denominated the northeast corner; is there at the termination of that line a pass in the Perrillo mountains?

A. I do not know.

83 Q. Have you or have you not been at the point designated on this Bonillas map as the northeast corner, being puerto de la silla, or College peak?

A. I have not.

Q. You do not know the points of that pass?

A. Except as seen from the river.

Q. You stated that the monument taken in this late Mexican survey as the north center monument was an old monument, because grass and weeds were growing up through it?

A. Yes, sir.

Q. Do you think this grass and weeds could grow up through that monument within a space of five years prior to that time?

A. O, yes; but I did not identify that as being that monument; I identified that monument as being the monument identified by Mr. Rosas as being on top of this hillock.

Q. Then the fact that grass and weeds are growing up through that monument would not indicate that it is a very old monument?

A. It simply indicates age.

Q. Do you think they could grow up in from five years to ten years?

A. Possibly; possibly.

Q. That, you said, was on a very small hillock, did you not?

A. I did; yes, sir.

Q. The monument which you testified about was south of the international boundary line, was it not?

A. Yes, sir.

Q. The monument which the Mexican survey takes in this survey is just on the boundary line, is it not?

A. No, sir; south of it; fifty-four-hundredths of a mile south of it.

Q. Will you examine that sketch map and see whether your answer is correct?

A. This map was made by a clerk in the office of the district judge at Guaymas. If you will read the description of this it is 54-hundredths of a mile south of the international boundary line.

84 Q. So that map is not correct?

A. In that respect it is not correct. No, sir; the map is made on a very small scale.

Q. Going further north in the same direction in which the small monument that you testified about is found from the Agua Prieta, are there not very many other small hills and hillocks?

A. Yes, sir; there are hillocks all along the river on both sides the whole length; but that is the only one with a monument on its summit.

Q. How far south of the international boundary line approximately is the town of Fronteras?

A. I do not know exactly; it is probably 35 miles; between 30 and 35 miles.

Q. What is the distance stated in the expediente between the southeast corner and the east center monument?

A. 59 cords from the southeast corner north to the east center monument.

Q. In miles, how far is that?

A. 1.53 miles.

Q. The distance from the center to the north center as given in the title papers is how much?

A. 100 cords.

Q. What is the distance from the monument in the Gallardo pass as given in the late Mexican survey to the Misa pass that you spoke of?

A. I do not know; I did not measure it.

Q. Look at this late Mexican survey south of the point designated the northeast corner?

A. I did.

Q. How far is it from that point to the Misa pass that you testified about?

A. I do not know; I did not measure it.

Q. Do you know the point that is spoken of in that map; do you know what point he means?

A. The Cerro Gallardo, I understand.

Q. Do you know where this Misa pass is that you spoke of?

A. I do.

Q. What is the distance between the Cerro Gallardo and this Misa pass?

A. Approximately between 2 and 2½ miles.

85 Q. How many monuments or points in the description of the Agua Prieta survey, according to the original expediente, does that late Mexican map pretend to locate?

A. Four.

Q. And what are they?

A. North center, northeast, southeast, south center.

Q. And the lands included in that are what?

A. Agua Prieta, San Bernardino, Gato, Baltazar. These are all, I think.

Adjourned.

MAY 12TH, 1899—10 a. m.

MR. FORD:

Q. Mr. Flipper, will you take the Bonillas map, please? Have you been at the point which is designated in that map as the northwest corner, small hills?

A. I have not, sir.

Q. Do you know whether at that location designated on that map there is a small hill there with a monument on it?

A. I know there is a small hill in that vicinity, but as to the monument I do not know.

Q. Do you know whether the small hill of which you speak is about a mile from the foot of the Mule mountains?

A. I do not know.

Q. Do you know whether there are any other small hills to the north of these, or any considerable distance to the north?

A. There are several small hills running along there near what

are marked "Mule mountains" in the survey; I saw these hills from the international monument number 86; I did not go to them.

Q. I believe you have testified you have not been up to the west center monument?

A. I have not been to the west center monument.

Q. Nor to the southwest corner?

A. No, sir.

Q. You have been to the south center monument, and that is correctly designated?

A. That is correctly designated on both of these maps.

86 Q. Did you testify that you had been to the southeast corner?

A. I was to the puerio de la Ceniza, but I did not find the southeast corner; I went to the point designated; I have been to the puerto de la Ceniza; I walked all over it hunting for it, but could not find it.

Q. Did you go over it?

A. I walked through it from the east to west side.

Q. No wagon road over it?

A. There was an old wagon road partly washed out and I followed the trail of that wagon road.

Q. How far did you follow it to the east?

A. Nearly through it; out on the lomas on the west end of the pass.

Q. You say you have not been to the point at the northeast corner?

A. I have not been to the point at the northeast corner. I am referring entirely to this map of Mr. Bonillas.

Q. You take the tracing of the international boundary line; you see there that line marked road from Santa Cruz to San Bernardino?

A. I do.

Q. You see where the line is with reference to monument number 19?

A. I do.

Q. That point at the monument number 19 is a pass in the mountains, is it?

A. It is.

Q. It is in the pass, and south of that point there is a loma alta?

A. There is a loma alta.

Q. On that loma alta there are two monuments?

A. On this loma alta there are two large monuments on a line nearly north and south.

Q. Are there any other higher hills immediately near this loma alta about which you have testified?

A. Not immediately close to it; they are north.

Q. One of the monuments on this loma alta is a new monument with a post in it?

A. There was no post in that when I was there.

87 Q. Did it appear to be a new monument?

A. It is hard to say; they both appeared to be recent—that

is to say, the piles of stones had no vegetation that would indicate them to be old.

Q. Did you find a pile of stones with a cross?

A. It might be called a cross or crescent or a T, according to one's imagination.

Q. The road from Santa Cruz to San Bernardino is correctly indicated on this international boundary line map?

A. It is.

Q. Is that loma alta about which you have testified as south of the monument number 19 correctly represented on the Bonillas map?

A. It is.

Q. The bald peak is located just near this loma alta?

A. It is east of it and possibly a little south of it.

Q. Going north from this loma alta along the Swisshelm or Perillo mountains, is there any pass in the mountains before you come to the pass designated by Mr. Bonillas as the puerto de la silla?

A. I do not know; I did not go there.

Q. I will ask you to state what you call the east center monument of this survey.

A. The east center monument as designated is near the mouth of the puerto de la misa.

Q. Is that the puerto de la misa spoken of in the title papers?

A. Only the pass near which is the monument is spoken of in the title papers.

Q. I am asking you with reference to this map.

A. The Misa pass is not shown on this map.

Q. Where should it be?

A. It should be where it is marked "Perrillo mountains;" something like two miles south of where it is on this map and south of the western entrance of the puerto de Gallardo.

Q. On the eastern boundary line of this map where would you say is the east center monument with reference to the point designated by Mr. Bonillas as the east center monument?

A. South of it.

88

Q. How far?

A. Probably 2 or 2 and a half miles.

Q. You did not measure the distance?

A. I did not.

Q. Where did you say the southeast monument of this grant should be?

A. About where Mr. Bonillas has it.

Q. You think that is correctly represented?

A. I think that corner is correct.

Q. I believe you stated, did you not, that at this point marked east Cruz monument by Mr. Bonillas there are not two other higher peaks very near it?

A. No; I did not state that.

Q. I will direct your attention now to the loma alta, which we

will assume for this question to be at the cross monument as designated by Mr. Bonillas. That point is the loma alta?

A. Yes, sir.

Q. You testified there are two monuments there?

A. Yes, sir; two monuments.

Q. Are there immediately near it two other higher peaks?

A. Immediately near it there are not two other higher peaks, but west of it there are several other higher peaks.

Q. What time was it you examined this land?

A. In April last.

Q. Had you been over it before since 1886?

A. A part of it; the eastern portion of it.

Q. From where and to where did you go?

A. I came in by San Bernardino and came through Gallardo pass, and then to the range of mountains to the Agua Prieta, then through to Fronteras.

Q. When you came through Gallardo pass did you take the road as marked on this map of Mr. Bonillas on the international boundary line?

A. My recollection is that I took the road south of Gallardo pass that comes into this same road.

89 Q. Is that the only time which you had been over here before or not?

A. Yes, sir.

Q. Did you go through this Perrillo chain from west to east?

A. From east to west.

Q. Where did you start?

A. The first trip I started from Cerro Gallardo.

Q. This wagon road you spoke of as going from puerto de la misa joins the road as shown on this map, joins the road on the same side as the Cerro Gallardo right at the foot of the slope; did you go over that section?

A. Yes, sir.

Q. Both times you went in a carriage?

A. I went to the eastern foot of the puerto de la misa in a carriage, and from there I went on foot across to the puerto de la Ceniza.

Q. You have never passed over the pass from west to east from the puerto de la misa to Gallardo pass?

A. I came through the Ceniza mountains down to the Agua Prieta from San Bernardino in a carriage entirely across the range from one side to the other. This map does not show this detour, but from the point immediately south of the Cerro Gallardo, in a southeastern direction to the puerto de la misa, and from the puerto de la misa in a southwestern direction and then to the Agua del Azufre, marked "Sulphur Springs" on this map.

Q. Was anybody with you at that time?

A. Mr. Pope and Mr. Tipton were with me, and also Don Jesus Montaño.

Q. In going on this particular road, is it true that you, in order to follow the old road—you had an occasion to remove the fence, break the fence?

Q. It is not true, because the road is entirely inside of the fence.

90 Q. You did not break the fence?

A. No, sir; in no place whatsoever.

Q. You say the road is entirely inside of the fence?

A. Yes, sir.

Q. Are you referring to the road that goes south of Gallardo?

A. Yes, sir.

Q. There are two roads joining inside of the fence; is that the only change these roads make from Santa Cruz to San Bernardino; is there a detour made south of the Gallardo inside of the old road that went north of it?

A. There is.

Q. The only change that you know of, then, on this road continues to San Bernardino, as marked on that map?

A. No, sir; there are other changes in the same old road. At monument number 82 one branch goes southeasterly and another branch goes northeast.

Q. It makes a detour around the southern part of this Gallardo peak and comes into this old road?

A. Yes, sir; no doubt about that.

Q. Gallardo peak is about 1,600 feet south of the boundary line?

A. Something about that; yes, sir.

Q. Did you testify that there was a road on the west of the Perillo mountains, going east through the Misa pass?

A. There is such a road; yes, sir.

Q. Do you know, as a matter of fact, that that is a mere wood road for hauling posts?

A. I do not know what it is for; it is a very good road; it is just as plain a road as you could get.

Q. Did you ever follow that road into the valley?

A. No, sir.

Q. As a matter of fact, the character of the country east of the Misa pass is much more precipitous, more difficult to travel in a vehicle, than the road east of the Gallardo pass, is it not—or do you know?

A. It is absolutely not more precipitous; it is a good road.

91 It is as good a mountain road as you can find; it is an excellent road.

Q. How far did this road go going east?

A. It joins that road at Gallardo pass and then on to San Bernardino.

Q. You testified that the point taken as the north center monument by the late Mexican surveyor, that the monument taken as the north center monument, in your opinion, was not the monument originally placed when this grant was surveyed?

A. No, sir; I did not testify that; I testified that I did not pretend to identify that as the original monument. It is very possible it is the original monument.

Q. And you believe that is the place?

A. Yes, sir.

Q. Will you state why you believe that is the place?

A. Because it agrees with the description in the original title papers.

Q. Then your assumption or theory is based on the supposition that the point described by Mr. Bonillas as the east center monument is in fact the northeast monument?

A. That is my theory.

Q. And if it is true as a matter of fact that the northeast monument of this grant as originally surveyed is what is termed the Silla pass, the northeast corner, as laid down on Bonillas' map, you would of course have a different theory?

A. If that is true, why certainly.

Q. If the old road from Santa Cruz to San Bernardino is correctly represented on this international boundary map, is it not true, in your opinion, that the monument on the loma south of that is the east center monument of this grant?

A. If this is the old road referred to in the old title paper, then that would be true.

Direct examination by Mr. POPE:

Q. Mr. Flipper, Mr. Ford has asked you about this old road designated on this map as the road from Santa Cruz to San Bernardino. When you were out in this country in 1886, or thereabouts, did you hear anything of what is known as the Cook road?

A. I did.

Q. Did you or not make any enquiries or receive any information at that time from the people living in that country as to the reputation of that old Cook road?

A. I did; I came in from Fronteras, and came to the road through Gallardo pass and went out again in a southwest direction and came to this road south of San Pedro, and I made inquiries as to what road that was, and they told me that that road went from San Bernardino to El Paso, Texas, and they told me that that road had been opened by Lieutenant Colonel Philip St. George Cook, prior to the treaty, and that it was used afterwards by emigrants going to California.

Q. From the information you received at that time from these parties, where would you say that road ran with respect to this road laid down here as passing by the Gallardo peak on the east cross monument of this grant, as to this Cook road running with respect to the road laid down on this map by Mr. Bonillas as the overland road?

A. I believe it is the same road as the old overland road laid down by Mr. Bonillas.

Q. You spoke about the fact of there being some high peaks, being some lomas or lomitass, near the Cerro Gallardo, and you spoke about one in particular as being near there with a monument on it or two monuments on it. Did I understand you to say there are or are not other peaks in the vicinity of these lomas?

A. Immediately close to that loma there are no others, but a little bit west of it there are several; my recollection is clear because Mr. Montañño told me that on the west side of one of them was a monument number 83 of the international boundary line.

Q. How far distant are these peaks from these other lomas?

A. About a mile, I should judge.

93 Q. How did they compare in size with these lomas?

A. They are as large or larger.

Q. Now, I believe you stated on your direct examination that there were some small lomas in that vicinity and numerous other lomas than this one on which you say you found this little pile of stones?

A. Yes, sir.

Q. Mr. Ford has asked you about the location of the Los Sauces, which is called the south center monument of this tract or boundary on this map. Did you go to Los Sauces upon your investigation of that part of this grant?

A. I was not there on this trip.

Q. Did you make any particular examination of the river between the Agua Prieta and these Los Sauces that Mr. Bonillas has on his map?

A. I made none whatever except hunting for water.

Q. Did you go as far south as Los Sauces?

A. I did not.

Q. You testified as to there being these Los Sauces at a particular place. Is that based upon any particular examination made on this or any other trip?

A. It was based upon an examination I made in 1886.

Q. Were you down there then for the purpose of examining this grant?

A. Not this one in particular, but I was surveying in general then.

Q. And your idea was that that was about the proper place for this place to be?

A. That was my idea at the time; yes, sir.

Q. In 1886 what were you surveying down there?

A. I was surveying public lands in the district of Arispe as agent for the Sonora Land Company.

Q. Did you have occasion at that time to locate this Agua Prieta grant as to its exterior boundaries?

94 A. No, sir; not in the way we located it now; at that time my purpose was only to get what the owners claimed; I never questioned what they claimed.

Q. What exterior boundaries did you follow in the district of Arispe?

A. I followed what they claimed; the boundaries laid down in the expediente.

Q. Is that true also as to the location of the north boundary laid down by Mr. Rosas showing the public lands in between these lands and the international boundary line and this Agua Prieta tract as claimed?

A. Yes, sir.

Q. I asked you yesterday something about your having made an observation from monument number 86, as to whether a line run due west from monument number 86 would cut a line of hills, or where it would reach with respect to a line of hills lying on the horizon westward from the north center monument as defined by you.

A. That line running due west would reach—I set my instrument at monument number 86, and turned off the course due west, and that line fell to the north of a sharp dark peak that was just above the horizon in that direction, and as far as I could see the range of hills were entirely south of the line, with several hills north of the line.

Q. Where is this sharp dark peak to which you refer?

A. It is in the range of hills that run from the north extremity of the Naidenibachachi mountains.

Q. Is it not true that your observation at that time rested upon the Huachuca mountains also?

A. Yes, sir. That line rested on the north extremity of the southern portion of the Huachuca mountains.

Q. Where did that line fall then with respect to the north extremity of the range of hills running north from the Naidenibachachi mountains?

A. It appeared to be nearly north of it, or rather, to be more accurate, there seemed to be a break in the chain of hills, and
95 then this line was north of the second part of these hills, to the north of it.

Q. Were they or not apparently near to the Mule mountains?

A. I do not know how far east of the Mule mountains they are.

Q. What is the direction of the Mule mountains from this cerrito that you have testified to as being south of the international boundary line, and that you observed?

A. They are also in the direction in which that chain of hills ran, and north of them; possibly a little west of that line.

Q. I will get you to look at this map of Cochise county, and state whether or not that correctly represents the location of these Mule mountains with respect to the section of country as to which we are now investigating.

A. It correctly represents the general view of the Mule mountains with respect to the country we are now investigating.

Q. Where are these cerritos or hills lying near this international boundary line from the north center monument to which you have testified?

A. They would be southeasterly from the Mule mountains.

Q. At the place designated on this survey and this map?

A. Yes, sir; the east end of it.

Q. In your trip of this country in former years did you ever go from Santa Cruz to San Bernardino?

A. I did.

Q. When was that?

A. 1886 and afterwards at various times.

Q. What was the character of the road from Santa Cruz to San Bernardino?

A. There are one or two good wagon roads and several trails.

Q. Generally in use?

A. Yes, sir.

Q. Did you have pointed out to you the wagon road going to Fronteras?

A. Yes, sir; that road was pointed out.

96 Q. Do you remember whether the road taken by Mr. Tipton, yourself, and myself, coming out near Agua Prieta, branches off from this one from Fronteras west of the puerto de la misa; do you remember whether or not that wagon road which turned to the right and went to what is marked on this map as the Sulphur Springs—how did this wagon road go as to the one that went to Fronteras, in what direction?

A. It went in a southwesterly direction.

Q. What appearance did that wagon road have at that time as to being well traveled or otherwise?

A. It appeared to be well traveled.

Q. Its appearance was indicative of recent use?

A. Yes, sir.

Q. Going from the puerto de la misa east, does that road going from that puerto branch after getting through the pass?

A. The wagon road itself does branch, but on the east of the puerto there are a number of horse trails going towards San Bernardino; I do not know where they go; they were in that direction.

Q. Are there any wagon roads or trails going southwest from the Agua de la misa?

A. There is a road from Agua de la misa that goes to puerto de la Ceniza; I followed that road afoot from the puerto de la misa.

Q. That is on which side of the Perrillo mountains?

A. On the east side.

Q. The puerto to the north of Gallardo peak, is that the same or separate puerto from the one at the south of the Gallardo peak?

A. I think it is a separate one.

Q. Is it a separate door or pass in the mountains?

A. It is a separate door or pass in the mountains.

Q. And how as to this puerto de la misa as to being separate from these others?

97 A. It is entirely separate; 2 or 2½ miles from them. It is entirely separate from them.

Q. Does it cut this range of mountains?

A. It cuts it near the center of the range of mountains as laid down here by Mr. Bonillas and as actually on the ground.

Q. I will ask you to designate on this map in evidence attached to Defendant's Exhibit A the location of Cabullona and Fronteras.

A. That location would be only approximate.

Q. I mean according to your best knowledge of the country.

A. These are laid down without scale, but the positions are approximately correct; they are designated by their names.

Q. These places marked by you by their names on the map forming a part of Defendant's Exhibit A, tendered in evidence, are the proper locations according to your best knowledge of the country, Cabullona and Fronteras?

A. They are approximately the correct locations; yes, sir.

Q. Did you take an observation from the center monument of this tract at Agua Prieta to puerto de la misa, or any object connected with it or in it?

A. I did.

Q. I will get you to state what that bearing is.

A. Being at Agua Prieta, I took a bearing to what appeared to be the center point of the west entrance of the puerto de la misa, and the bearing is north 87 degrees 33 minutes east, magnetic, and lacks about two degrees of being true east, magnetic; it lacks two degrees and 27 minutes.

Q. Did you take any bearing from the Agua Prieta to San Jose peak, the high peak in that range?

A. San Jose peak lies to the west; yes, sir.

Q. What is the bearing from Agua Prieta to San Jose peak?

A. The bearing is south 73 degrees 44 minutes west, magnetic.

98 Q. This College peak, to which reference has been made, where is it with respect to the range of mountains next to the Gallardo?

A. It is at the extreme north end of what they call the first range.

Q. Did there appear to be any breaks in those mountains as you go northwest?

A. As I could see it, there appeared to be a depression there.

Q. I mean any depression in the mountains such as would constitute a pass?

A. Not as seen by the eye from the point where I was.

Q. Is there a break north of that College peak?

A. There was a depression.

Q. I mean north of the most northerly point of that College peak.

A. According to my observation there was a depression, but as to whether there was a break there I do not know.

Q. What is the character of the surface of the ground in the vicinity of this Cerro Gallardo as to being rocky or otherwise?

A. It is rocky; very rocky; the slope of the Gallardo on all sides is covered with loose rock; loose rock is all over the ground in that vicinity, in great abundance everywhere.

Q. You spoke yesterday of the east cross monument of Mr. Bonillas, or of the east center monument, and the southeast corner of Mr. Bonillas being in a line. I will get you to explain the general topography of the country and of the east center monument which he fixes at Cerro Gallardo with respect to these two points, looking eastward from the Agua Prieta and that immediate vicinity, the elevation which surrounds it, and the horizon, what is visible as to breaks in the mountains, at the places indicated by you in your testimony?

A. I do not think I understand your question.

99 Q. From the center monument of the Agua Prieta, as laid down on that map with respect to there being an appearance of openings at those three places I have mentioned?

A. What is called Gallardo pass on this map is not visible from the center monument, and in the Perrillo mountains there is a depression; at the puerto de la misa there is another opening, pass, and an excellent wagon road from it to the puerto de la Ceniza, as marked on this map.

Further cross-examination by Mr. Ford:

Q. Look at this Cochise County map. Is the road from Santa Cruz to San Bernardino on this map the same as on the Bonillas map and the international boundary line?

A. So far as I can tell, it is the same road; I believe it to be the same road.

Q. Does that map show the pass through which that road passes to go to College peak?

A. It does not.

Q. There is no pass marked there?

A. There is a pass marked through there, but not to that point; there is nothing on this to indicate any such a pass; at this point the wagon road is seen marked road from Santa Cruz to San Bernardino.

Q. Is it correctly laid down on this map; if it is, then the east center monument is south of the present number 82 monument?

A. That does not follow.

Q. If the road laid down on this map is a road described in the original title papers, then that is the east center monument, and your theory is entirely wrong on that supposition?

A. Yes, sir; if that is so, I am entirely wrong on that supposition.

Q. The road from San Bernardino passes right by this monument number 19. In this case in April, 1899, did you make any inquiries of Mr. Camou, the gentleman sitting here, as to the road from 100 Santa Cruz to San Bernardino?

A. I asked Mr. Edward Camou if he could point out the natural objects on this grant. He told me he did not know any of them; that his mayordomo, Jesus Montano, did, and he came and went with us and showed them, as Camou's father had an interest in the grant.

Q. Edward Camou did not point out anything, and did not tell you where that road was?

A. No, sir.

Q. I will show you a sketch, plat of the lands of the Messrs. Camou, situate in the district of Arispe. Does not that map show a road from San Bernardino to the Gallardo pass?

A. It does.

Q. And if that road correctly represents the road at the time this title was issued your theory is entirely wrong, is it?

A. It is.

Q. From a paper made by the Mexican surveyor in 1880, showing

the road to San Bernardino as passing immediately north of this Cerro Gallardo and south of the monument number 19 or 82, as designated there, I will ask you to translate these Spanish phrases: En una loma pequeñita.

A. On a small hillock.

Q. Que esta a la derecha?

A. Which is to the right.

Q. Y inmediata?

A. And close.

Q. A otras dos mas altas?

A. To two others which are higher.

Q. Is this phrase which is denominated the east center monument, una loma pequeñita?

A. It is not.

Further direct examination by Mr. POPE:

Q. Are there any lomas pequeñitas in that vicinity?

A. There are quite a number of them, and this one on which the monument is located is one of two that are higher.

Q. Would a road from Santa Cruz to San Bernardino, passing as indicated by Mr. Bonillas on his map, go through the first
101 pass to the north of the puerto de la Ceniza?

A. No, sir. It goes through the third pass, north of the puerto de la Ceniza.

Q. You testified yesterday, in response to a question of Mr. Ford, as to this north center monument, and you did not identify this pile of stones as the original pile of stones put there by the Mexican surveyor. Did you mean by that to say that in your opinion it did not conform to the calls of the expediente as to that?

A. I meant to say this: That I did not pretend to identify that pile of stones as being the identical pile of stones put there by the Mexican surveyor, referred to in the title papers; but it is quite possible that it is the same pile of stones.

Q. How does that pile of stones compare with other piles of stones as to age around there?

A. It was made of stones and earth, and there were grass and weeds growing up there, forced their way through the stones.

102 WILLIAM M. TIPTON, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. State your name, employment, and profession.

A. My name is William M. Tipton; I am special agent of the court of private land claims, being employed in the office of the U. S. attorney for that court.

Q. Your profession?

A. I cannot say that I have any profession. I have been engaged for many years as a clerk, as a draughtsman in the office of the U. S. surveyor general for the Territory of New Mexico, and also at various times during the last twenty years, while not connected with that office, I was engaged in surveying the public lands in New

Mexico, but I was not educated as a civil engineer; I have had experience in land-surveying at different times for the last twenty-three years.

Q. As special agent of the court of private land claims, assigned for duty in the office of the U. S. attorney for that court, have you the past month visited the locality now in controversy, known as the Agua Prieta grant or tract?

A. I have.

Q. When was that and in whose company?

A. It was in the latter part of last month and in company with yourself and Mr. H. O. Flipper and a couple of men who were employed as drivers.

Q. Were you assisting Mr. Flipper in making the measurements to which he has testified on the stand in this case?

A. Yes, sir; I assisted him in making all of the measurements, I believe, on the different grants.

Q. What would you say as to the correctness of the measurements made by you and him as testified to by him?

A. I believe the measurements are correct and I know that every effort was made to do the work with great care and accuracy.

103 Q. Did you go with Mr. Flipper to what he testified to as the Agua Prieta?

A. Yes, sir.

Q. You assisted him, did you, in measuring the distance from the Agua Prieta to the international boundary line?

A. Yes, sir; I assisted him in the measurement of the bases that were necessary, and in the selection of the points for triangulation from the Agua Prieta up to the international monument number 86.

Q. Did you go with him to what he has testified to as the north center monument of this grant?

A. I did.

Q. At what distance was that monument found with respect to the international boundary line approximately?

A. I can only state as a matter of recollection from the calculation that was made afterwards. I did not make any note of it myself; I think it was a little over half a mile.

Q. Did you go to international monument number 86?

A. I did.

Q. In your judgment, from the observation made on the ground, where is this north center monument to which you have referred with respect to the international boundary line?

A. It is south of the international boundary line.

Q. I wish you would describe the character of this monument, the north center monument.

A. It is a monument of stones, most of them small; I think it is not to exceed a foot or 15 inches, certainly, at the outside, in height; it is longer in one direction than it is in another, I believe from east to west; at any rate, we measured it, and I think it was 70 inches in one direction and about 60 in the other, and between the stones of which it is composed grass and some weeds have grown up, and

some of the stones which I attempted to move were quite firmly embedded in the ground, but still capable of being moved; none of them were very large.

104 Q. What was the appearance of the monument as to being recent or otherwise?

A. Well, those terms are relative; it is hard to say what you would call a recent monument, but I could not pretend to say how long it may have been in the position it occupies; may be a few years, and may be a great many years.

Q. What is the character of the surface of the ground?

A. It is located on the top of a small hill in the valley of the Agua Prieta, and on the east side of the water-course, of what might be called the Agua Prieta river.

Q. And with respect to the road running by that valley?

A. It is east of the road.

Q. About what distance, roughly speaking, is it from the gulch or river of Agua Prieta?

A. I do not think when I was at the monument that I noticed it with a view of fixing it in my mind, but my impression is that it is not to exceed a quarter of a mile, and I am inclined to think it is less than that.

Q. How much is a hundred cords in English miles?

A. It is about 2.6 miles.

Q. From the measurements made on the ground and subsequently calculated, is this monument to which you have referred as the north center monument a greater or less distance from the Agua Prieta than 100 cords?

A. It is a greater distance.

Q. And the direction from the Agua Prieta, what is its course?

A. It is very nearly north of the monument from where our measurements were begun at Agua Prieta. I do not know whether it is east or west of a true north line; it is very near such a line.

105 Q. Suppose with the Agua Prieta as the center, a league were laid off true north a hundred cords and 89 cords from the sides, or a parallelogram, having as its north side an east and west line running through a point 100 cords north of the Agua Prieta, state whether or not such a parallelogram, according to a true course, would lie within, or any part of it within, the United States.

A. Assuming the courses you refer to were true instead of magnetic courses, such parallelogram would lie entirely within the Republic of Mexico.

Q. Suppose you build up such a parallelogram on a course from the center monument at the Agua Prieta to the north center monument as to which you have testified, measuring off a hundred cords on such a course, would such a parallelogram fall, or any part of it, within the United States?

A. If I understand the question, I should say that no portion of it would fall within the United States; I do not believe that such a parallelogram as that would fall within the United States or any portion of it.

Q. Did you take an observation of the course from the north center monument as described by Mr. Flipper to what is known as Gallardo cerro or Gallardo peak?

A. Yes, sir; we laid off with a transit the course that is mentioned in the survey made by Mr. Rosas with a view of ascertaining whether the bearing given in his notes would agree with ours and enable us to locate this monument, and the bearing from the monument, according to my recollection, was magnetic course north 79 degrees 3 minutes east, and that line ran over the top of Gallardo peak.

Q. Looking westward from the north center monument, what is the topography of the country as to there being elevations in that direction?

A. After one crosses the flat portion of the valley of the 106 Agua Prieta there are some hills forming the first bench, and they extend for a number of miles; I could not say how many, perhaps five or more, without increasing much in height, and beyond that towards the international boundary line there is a range of hills which appears to be separated from what is called the Naidenibachachi mountains by a pass. That range extends from the road which runs from the Agua Prieta to the Mexican custom-house at Morita in a northerly direction nearly to the international boundary line; I should say from observation from the north center monument.

Q. You had the Naidenibachachi mountains pointed out to you, did you?

A. Yes, sir.

Q. These hills that run from them and nearly to the international boundary line, are they a continuation of the general course of these Naidenibachachi mountains as viewed from the north center monument?

A. Yes, sir; viewed at that distance by any one who knows nothing about the topography of the country only from a glance that he had, one might think that they are practically one chain, but there is a distinct pass between this range of hills and the Naidenibachachi mountains.

Q. Where does this range of hills forming a continuation of the Naidenibachachi mountains terminate on the north, according to your observation, from international monument number 86?

A. That range of hills appears to terminate a short distance south of the line.

Q. Did you see on the west any cerritos near or at the end of this range and south of the line?

A. There were a number; there were some towards the north; there were two or three very small in comparison with the other hills of the same range.

107 Q. And how was their bearing with respect to this north center monument as to course?

A. One of them was, I think, on course 79 degrees 3 minutes west from that monument; that is the reverse of the course taken to the

monument on the Gallardo peak, but that is a matter of recollection ; that is a magnetic course.

Q. What would be that course as a true course according to variation ?

A. I do not remember exactly what variation there was ; it would be very nearly east and west, I should think, but I do not state exactly because I do not remember what the variation was ; it was somewhere between 12 and 13 degrees, I believe.

Q. Did you have the Mule mountains pointed out to you ?

A. Yes, sir.

Q. Where do the Mule mountains lie with respect to these cerritos that you have just mentioned ?

A. They lie north, I think ; perhaps a little to the west, north and west.

Q. What is the character of the country in between the north end of these hills and the Mule mountains lying off to the north and the west, between these hills and the Mule mountains, as to being open or otherwise ?

A. Immediately north of the line, I think, there is a little open country there.

Q. Can you give any estimate of the distance of the Mule mountains from these hills to which you have referred just south of the international line ?

A. No, sir ; I do not think I can, because I did not pay any attention to it at the time.

Q. This range of hills, as I understand it, are west of the ones seen on the horizon from the center monument and from the north center monument ; is that true ?

A. From the center monument at Agua Prieta they would appear to be north, but from the north center monument they would
108 appear to be west ; in fact, the north end, I would think, would be almost directly west and form the horizon in that direction.

Q. On the line to the east from the center monument I wish you would describe to the court what forms the horizon in that direction ; I am speaking of the center monument at Agua Prieta, or the elevation immediately adjacent thereto ?

A. The Ceniza mountain range is directly east, and I am not able to state now whether the Gallardo peak is in view or not from that center monument, but the range of the Ceniza mountains is from one end to the other.

Q. From the elevation immediately at the center monument, are there visible any breaks in these Ceniza or Perrillo mountains ?

A. Yes, sir ; there are two that are visible from that point, one of which is towards the north end of the range, and the other further south.

Q. Did you make any inquiry as to the names of these two breaks in the mountains ?

A. Yes, sir ; I did.

Q. What did you ascertain to be the names of these two places ?

A. I was informed that the northernmost one was known as the puerto de la misa, and the southern one the puerto de la Ceniza.

Q. Did you go to these places, or to either of them?

A. I went to both of them.

Q. Did you go to the Cerro Gallardo?

A. Yes, sir.

Q. Where is that with respect to the international boundary line?

A. The Cerro Gallardo is south of the international boundary line—that is, its highest point is, and the most of it. The international monument number 82, I believe, may be said to be upon the northern slope of the cerro, but very near its foot.

Q. The summit of Cerro Gallardo I understand to be entirely in Mexico?

A. Yes, sir; all of it is in Mexico practically, except a few
109 hundred feet, perhaps, at its northern base, where the international boundary line runs across it.

Q. Did you go to a puerto to the north of this Cerro Gallardo?

A. I did.

Q. That is the puerto in which this international monument is located, is it?

A. Yes, sir.

Q. Did you make an attempt to go through it with a vehicle in company with Mr. Flipper and myself?

A. Yes, sir; I did.

Q. How is the access to that pass as to being passable by vehicles?

A. It was extremely bad; there were evidences of an old road in there, but it was not used much; evidently had not been for a long time, and it was extremely rough for traveling.

Q. Did you encounter any obstacle going through there?

A. When we got in the neighborhood of this monument we found a wire fence that ran north which crossed the pass and the road, and in which there was no gate, and that stopped us from going further to the east.

Q. Did you find any puerto southwest from the pass just referred to?

A. Yes, sir.

Q. Where was it?

A. On the south side of the Gallardo hill or peak.

Q. Is there a wagon road through that pass?

A. There is.

Q. Did you go through that pass in a vehicle?

A. Yes, sir; we went through it twice in a vehicle.

Q. What was the character of that puerto as to being passable by a vehicle?

A. There is a very good road through that puerto; a well-traveled road.

Q. With respect to the puerto de la misa, how many times did you visit that while you were there?

A. Twice.

110 Q. Did you spend a night there in camp?

A. On the second occasion I did; I stayed there over night and half the next day.

Q. Any water in that pass, puerto?

A. Yes, sir; southwest of the highest point of the pass and on the south side of it there were two water holes in a sort of basins in disintegrated granite. We camped within a hundred feet of those water holes.

Q. Did you make any inquiry in that pass or at that water hole of any person living in the country as to the name of that pass and the name of that water?

A. I did.

Q. What did you ascertain to be the name of each, the name of the pass and the name of the water?

A. The name of the pass and the name of the water are the same, the one the agua de la misa and the other the puerto de la misa.

Q. Was that on your second trip there?

A. Yes, sir; well, I made enquiries on the first trip, but of different parties.

Q. Of whom did you make inquiries?

A. Of a man named Jesus Montaña.

Q. Who was he?

A. He was Camou's foreman at his Cabullóna ranch.

Q. That is the home ranch in that section, so far as you ascertained?

A. That is my understanding.

Q. Is there a wagon road through this pass, the puerto de la misa?

A. There is.

Q. What is the distance from this pass to the Cerro Gallardo in a straight line?

A. I can only state that as a matter of estimate; I did not measure it; I should think it was between 2 and 3 miles, probably.

Q. Did you go from the Cerro Gallardo to this pass over a wagon road?

A. Yes, sir.

Q. What is the distance by wagon road?

111 A. Perhaps from half a mile to three-quarters of a mile further than it would be in a straight line.

Q. How many times did you go over this road through the pass?

A. I went over it once entirely from one side of the mountain to the other; the second time I went from the east side as far as the agua de la misa; and when I left the mountain I went back on the east side instead of coming out on the west side; so I went entirely through it once and then practically half way through it again.

Q. Describe to the court fully as to the character of the wagon road through that pass as to its adaptability for use as a wagon road independent of artificial improvements.

A. The wagon road is a very good one, and there are very few, if any, places upon it, even on the eastern side of the mountain where it is very steep, where it has been necessary to do any work on it in order to make it passable for wagons; it is of course in places rocky, but for a mountain road it is a very excellent road, so much so that the first time I drove over it it only took three-quarters of an hour

to drive from the south base of the Cerro Gallardo to the agua de la misa on the western slope of the mountains; it is a good road as far as I saw it.

Q. Does this road going through the pass branch in either direction going east or west?

A. At its eastern end it joins the road passing through Gallardo pass in the direction of San Bernardino.

Q. At its western end the well-traveled road, I understand, goes to the Cabullona?

A. I did not follow it that far.

Q. It has the appearance of being well traveled?

A. Yes, sir.

Q. Any other branches from this road either east or west?

A. On the west side of the mountain there was a trail where
112 wagons had left this well-traveled road going in the direction of Cabullona, and then turned off in a more western direction towards what is called the Sulphur Springs; but where the wagons turned off at that point it could not be stated to be a road; it was a trail evidently used by horses, &c.; also there were some wagon tracks on it.

Q. On the east side are there any trails leading off from this wagon road or from this main road in any direction?

A. There was a wagon road that ran south from the agua de la misa, not away from the mountains, but practically along the line of the mountains in a southerly direction down to what is known as the puerto de la Ceniza, but that was not so well-traveled a road as the one coming clear across the mountain towards Cabullona.

Q. You have spoken of Gallardo pass. Where was that point?

A. Immediately south of the Gallardo hill.

Q. You say this road here joins that road to the south of the Gallardo peak?

A. Yes, sir; it joins it at what you might call the west end of the Gallardo pass.

Q. Going farther east, do you find these combined roads joined by any other roads coming from the direction of the pass next north of the Gallardo pass?

A. Yes, sir. After one gets through that Gallardo pass going east, there is a road comes in from the left-hand side—that is, from the north, which, apparently, comes from the pass north of the Gallardo hill.

Q. Is that out in the direction of the mezcal factory?

A. Yes, sir. I think it is west of that, but it is east of the pass.

Q. Did you go down to that Ceniza pass, or did you have it pointed out to you or described to you?

A. Yes, sir; I had it pointed out to me before I went there.

113 Q. What is the distance of that pass from the Cerro Gallardo, in your opinion, in a straight line?

A. I do not know; it is hard to say; it is mere guesswork; perhaps anywhere from 5 to 7 miles; I do not know.

Q. In your judgment it lies somewhere between these measurements?

A. Yes, sir; I should think so.

Q. Did you go to this Ceniza pass?

A. Yes, sir.

Q. What extent did you go through it?

A. I examined both sides of the pass from the point where the road coming from the puerto de la misa comes into the Ceniza pass in a western direction for the distance of perhaps a mile and a half or more.

Q. Did you find any evidence of travel through that pass?

A. There are evidences of an old road up the arroyo, evidently not much used recently, although there was a wagon track, one or two perhaps, that had been made but a short time.

Q. Any trails through that pass?

A. Yes, sir; there were several trails on both sides.

Q. Did you make any observation — the Agua Prieta or the center monument to this puerto de la misa?

A. Yes, sir; I took the bearing of what appeared from that point to be about the center of the pass.

Q. What did you find the bearing to be?

A. I do not recollect exactly; it was somewhere about, I think, north 87 degrees east; but Mr. Flipper made the notes of this observation, and I do not at all recollect them.

Q. However, you verified the observation?

A. Yes, sir; I read the instrument myself with him.

114 Q. The directions stated by him in his examination is according to your recollection?

A. I do not remember what he said, but I know that we verified the readings. I read one side of the instrument and he the other, and he wrote it down correctly in his book, and I think it was somewhere near north 87 degrees east; I may be wrong about that, however.

Q. Where is this Gallardo peak located with respect to the main mountains laid down on the Bonillas map as the Perrillo or Ceniza mountains?

A. Near the north end of these mountains.

Q. In which direction from the main range of mountains lying immediately eastward from the center monument?

A. I do not think I understand your question; but, if I do, it is near the north end of the mountains on this map.

Q. In which direction from the north end of these mountains is that hill, as a matter of fact?

A. I should think it was a little north and east; perhaps very nearly north, but I did not verify that; that is only my impression.

Q. Passing by the Cerro Gallardo coming westward, what is the character of the country between the Gallardo peak and the north end of the Perrillo or Ceniza mountains—in other words, is the Perrillo or Ceniza mountain connected in a consecutive range with the Cerro Gallardo on the ground, as a matter of fact?

A. No, sir. The main range runs off to the west, a little farther west than the Cerro Gallardo, and between the range and the Cerro

Gallardo there are some hills which are a sort of foot-hills to the mountain range; on the north side of the road there are also some hills, but these are widely separated from the mountain range by the intervening plains.

115 Q. How does the Cerro Gallardo lie with respect to the range of mountains near to the international boundary line and north of this monument in the pass north of the Cerro Gallardo?

A. It lies very nearly south of that range, and there are some hills at the southern termination of the range which come down close to the Cerro Gallardo.

Q. Do I understand, then, that the pass in which this international monument is located north of the Cerro Gallardo separates this Cerro Gallardo from this range of mountains north from it?

A. I won't say that exactly; I would say it separates it from the foot-hills in that range, because the mountains proper, in my opinion are farther north, but their southern termination, which consists of hills, comes down towards the Gallardo, and it is between these hills and the Gallardo that this northern pass is.

Adjourned until 2 p. m.

Cross-examination by Mr. Ford:

Q. Will you take the Bonillas map, please, Mr. Tipton? You said on the first time that you went to the Gallardo pass you enquired of Montaño; to whom did you speak the second time, if anybody, about the country?

A. A man whose name I do not know, but he said he was a cowboy in the employ of some one there on the ranch; I did not understand with whom, but not of Mr. Camou, from what he said.

Q. Did you ask anybody else about the pass or any other part of the topography?

A. I do not know that I personally did. Mr. Edward Camou was asked, I think, in my presence in regard to the tract generally, and said that he was not well acquainted with the names of the place in that vicinity, but would send us a man who was.

Q. You have been at the point marked northwest corner, small hill, on this Bonillas map, have you?

A. No, sir.

116 Q. Do you know whether there is a small hill at that point?

A. I am not able to say whether there is or not, not having been there.

Q. Have you been at that point called West Cruz monument on this Bonillas map?

A. No, sir.

Q. Have you been at the southwest corner?

A. No, sir.

Q. Have you been at this point called the South Cruz monument Los Sauces?

A. Not at any monument; I must have been in the immediate vicinity of that place, however.

Q. Have you been at or near the point called the southeast corner?

A. Yes, sir; I was down in the Ceniza pass, what is said to be, but I was not at that monument; I did not find it.

Q. You went near this Gallardo peak?

A. Yes, sir.

Q. And found evidences of an old road?

A. Yes, sir.

Q. In going along that old road you were stopped by a wire fence?

A. Yes, sir; in going east along it.

Further direct examination by Mr. PORE:

Q. What have you to say as to whether or not this Gallardo peak is correctly represented on the original map filed by Mr. Bonillas?

A. I think it is not, in this respect: That it is not represented on this map that the northern slope of the Gallardo extends as far north as the international boundary line, and my recollection is that the international monument north of the peak is on the north slope and near its foot, within perhaps one or two hundred feet of the road of which I spoke as running through the pass north of the peak.

Mr. FORD:

Q. Is that monument on the slope of the high hill or on a slope of the Gallardo itself?

A. Are you speaking of the international monument?

Q. No, sir; I am speaking of the monument described as 117 the East Cruz or cross monument.

A. I did not see that monument; I did not go up on that hill at all.

Q. Is the international monument at the foot of that high hill that is northwest of Gallardo, or do you distinguish between that high hill and the Gallardo peak?

A. The high hill, as I viewed it from the road, not going up on it, appeared to me to be a sort of a spur of the Gallardo running off to the west; that was the impression it made on me, and, while I may be wrong, I was strongly impressed that the international monument was not on the slope of this high hill, but on that of the Gallardo proper, as I understand it.

Q. I think that you are wrong on that?

A. That may be.

Mr. PORE: I desire to tender in evidence an extract from the report of Lieutenant Colonel P. St. George Cooke of his march from Santa Fé, New Mexico, to San Diego, Upper California, found in executive document number 41, and on pages 554 to 558, together with a letter from the same officer connected with the report, dated December 18, 1846, and addressed by him to the governor of Sonora on page facing page 562, the two together to be Defendant's Exhibit A 1 (marked Defendant's Exhibit A 1).

Also map showing part of the march and wagon road of Lieutenant Col. Cooke from Santa Fé, New Mexico, to the Pacific ocean, opened in 1846 and 1847, opposite page 564 of the same report (marked Defendant's Exhibit A 2).

Also extracts from the report of United States and Mexican boundary survey by Maj. W. H. Emory, page 20; also on page 18 of part II of that same report (marked Defendant's Exhibit A 3).

118 W. E. MURPHY, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. Were you examined at the last session of this court in the Agua Prieta case?

A. Yes, sir.

Q. Have you in your hand the map of the international boundary line, from the archives of your office, as made by Maj. Emory in 1855?

A. I have.

Q. You are the chief clerk, I believe, in the office of the surveyor general here at Tucson?

A. I am.

Q. And is this map I hand you here one of the official archives of your office?

A. It is.

We desire to tender in evidence portions of this plat of the international boundary line between 109 degrees 16 minutes west longitude and 109 degrees west longitude. I will supply tracings of it, copies of it (marked Defendant's Exhibit A 4).

IGNACIO BONILLAS recalled for the plaintiffs.

Mr. FORD:

Q. What acquaintance, if any, have you with the country in Sonora, Mexico, east of the Perrillo or Ceniza mountains from south of the Gallardo peak?

A. I have been through that country repeatedly, and I think I am thoroughly acquainted with that country.

Q. What was the occasion of your going through it?

A. I have been making surveys in there on both sides, on both valleys, by the Agua Prieta valley and the San Bernardino valley, and had occasion repeatedly to go into these mountains and others in connection with the making of surveys in the southern part of the San Bernardino valley and the Agua Prieta valley. I came across these mountains on horseback several times.

119 Q. Is the international boundary monument number 82 located on the slope of the Gallardo peak, or any high hill northwest of the Gallardo?

A. It is located on the slope of this hill, which is a spur or foothill of the Gallardo, and on the slope of the Gallardo proper.

Q. State whether or not you are familiar with the country imme-

diately north and immediately south of this high peak for a distance, say, of 2 miles south of it; a mile and a half or two miles.

A. I am.

Q. What is that country there; how would you describe it?

A. The country, for about 2 miles south of the Gallardo peak, is a series of low hills; you might say it is really the same path running from the Gallardo down to the north end of the Ceniza or Perrillo mountains.

Q. About how far?

A. For, I should say, 2 miles or 2 miles and a half, perhaps, there are low hills in that distance; they are low hills. There are some high, detached hills to the southwest; they are part of the Perrillo mountains and extend from the Perrillo mountains to the north.

Q. In your investigations in that country, making surveys or otherwise, did you ever hear of any pass called the Misa pass?

A. No, sir; I never heard of a pass of that name.

Q. Are you familiar with that part of the country which is identified by the witness Flipper or termed by the witness Flipper the Misa pass?

A. I am perfectly familiar with that country.

Q. What is that country termed by the witness Flipper the Misa pass; is it a separate pass from the Gallardo pass?

A. I do not think so, because it is not a pass that goes from the southeastern side. There is a depression running from Gallardo to the south. I think it is continuous to this point, which is called now the Ceniza pass, and which is at the north end of the Ceniza or Perrillo mountains.

120 Q. Is there or is there not between that north end of the Perrillo or Ceniza mountains and the point you have described the Ceniza pass any other pass?

A. Not that I know of; not that I consider a separate pass from the Gallardo.

Q. Did you state in your direct examination whether or not there is evidences of an old road north of the Gallardo and north of the high hills which are just northwest of Gallardo?

A. Yes, sir.

Q. Is there not a road just south of the Gallardo peak?

A. Yes, sir; there is also a road there.

Q. State whether these roads are different or whether they are simply a detour around Gallardo as they come together.

A. They are simply a detour; it is the same road running from the Agua Prieta valley until they reach a point perhaps a mile west of the Gallardo, one going to the north of the Gallardo mountains and the other going to the south, and they meet again at a point not over half a mile east of Gallardo mountain, and they follow along into the San Bernardino valley.

Q. What is true as to whether or not there is any wagon road through this part which you call Gallardo pass, termed by Mr. Flipper the Misa pass; if so, what that road is for, and where it goes?

A. There has never been a wagon road there until very recent

times; the distillery established is at the point west of Gallardo mountain, known as the Gallardo distillery; mescal and wood come from these Ceniza mountains, and persons in very recent times have gone in wagons west along Gallardo pass, and after going about a mile turn to the south along the foot-hills of the Perrillo mountains to bring the wood and mescal; there is no wagon road there now, and there has never been a wagon road going through that point to the east of the San Bernardino valley. I have been there
 121 too many times on horseback and on foot, and no wagon road can go through there unless some money is spent to make it.

Q. What is true, if you know, of any wagon road going through the pass which has been described as the puerto de la Ceniza?

A. There is no such a thing as a wagon road there and never was one; there is an old distillery at the foot of the Ceniza pass on the west side and used to be operated by a Swiss named Bonioran, and you can go with wagons from this distillery along the eastern foot-hills of the Perrillo to the north to the Gallardo pass, or else towards the Agua Prieta on the west side, but you can go to the San Bernardino valley across the Ceniza pass and to the east.

Q. Do you know, as a matter of fact, how the people of Sonora who are east of the Perrillo mountains and some distance, say from 5 to ten miles, south of the line, cross the Perrillo mountains to come west?

Q. I know the people all the way; Bavispe is a place perhaps 70 to a hundred miles south of the line; Oaxaca, they travel to the north to go to Bisbee, and if there were such a road through the Ceniza pass or through this Misa pass these people and the people living in there would save perhaps ten to twenty miles to go to the Agua Prieta country and thence to Bisbee if they could go through any such a pass as that; they all go around by San Bernardino and through the Gallardo pass.

Q. You know that of your own knowledge?

A. I know that positively to be so; they can travel across there on horseback.

Q. I will ask you this question: Is there any traveled wagon road south of the road south of the Gallardo peak between that and the Ceniza pass?

A. No, sir; no wagon road.

122 Q. Has there been one?

A. There has not been one, traveled wagon road; I mean a wagon road that will go to the Agua Prieta and the San Bernardino valleys; you can go north and south along in this direction that I have said; they have been used now for hauling posts for this wire fence, but no road goes across this depression to the Agua Prieta and San Bernardino valleys except it go through Gallardo pass.

Q. Did you hear of the Misa pass?

A. I never heard of that pass.

Q. Will you state again, if you have not already, whether there is any evidence of the old road north of the high hill which is north-west of Gallardo peak?

A. Yes, sir; what is known as the old overland road runs by the peak north of the Gallardo peak, north of this high hill which is at the foot, a little west or northwest, of the Gallardo mountains.

Cross-examination by Mr. POPE:

Q. You live at Nogales?

A. Yes, sir.

Q. Did you formerly live at Magdalena?

A. Yes, sir.

Q. Both of those places are 75 or a 100 miles to the west and northwest of the points we are now discussing?

A. I do not know as to the distance; I could not tell; but I should think it is farther than that.

Q. Well, 75 or a hundred miles?

A. Perhaps so; yes, sir.

Q. Did I understand you to say that there is no such thing as a well-traveled wagon road through what these witnesses have testified to as the puerto de la misa?

A. No traveled road that will run from the Agua Prieta valley to the San Bernardino valley that I know of; there is a horse trail; you can go on horseback; that is all; and I have gone there repeatedly.

Q. That is all the road there is through that pass?

A. Yes, sir.

Q. That is, as far as you know?

A. Yes, sir.

123 Q. When was this distillery made that you spoke of?

A. I do not know.

Q. Was it there when you were last at this section of the country?

A. Yes, sir.

Q. Was it there in 1895 when you made this survey?

A. Yes, sir; it was an abandoned distillery.

Q. You say this road was used as a trail in connection with that distillery?

A. Not at that time, but years ago.

Q. You were there in 1895?

A. Yes, sir.

Q. That was worked up to two or three years?

A. No, sir.

Q. It had been used in connection with this distillery or not prior to that time?

A. As far as I know after this new distillery was established there by Alameda he has used wagons to bring his wood and mescal through this Ceniza pass, and he has run his wagons there, and, as a matter of fact, it was a deserted distillery in 1895.

Q. It was deserted?

A. Yes, sir; I was there.

Q. From what part of the Ceniza mountains did they bring their wood and other material for their distillery?

A. I suppose wherever they could get it; it is very scarce; I should think they would get it wherever they could.

Q. You said it was used for the purpose of bringing material to this distillery; from what place?

A. From these mountains.

Q. From what part of these mountains?

A. The Ceniza mountains or the Perrillo; there seems to be a valley running about north and south, and that depression in the Perrillo mountains shown here in the map is to the west of this valley, and this road would run along the foot-hills there; there is another spur running to the east of the line I represented in this map as the Agua Prieta valley, running from the southeast corner
124 to the east center monument, and I suppose they get wood from both slopes, from both sides, and mescal for their distillery.

Q. This road then constituted an avenue through which they got material for this distillery on the west slope of the Perrillo or Ceniza mountains?

A. On both sides; yes, sir; I suppose they would get wood from both sides.

Q. Don't you know, as a matter of fact, that in 1895 there was, and that there is, a well-traveled wagon road bearing evidence of frequent use and of use for a long time, at this time, running right through the puerto de la misa from east to west?

A. No, sir; there is a road running out to the Agua Prieta valley from the point that you call the puerto de la misa, but not east to the San Bernardino valley; you can go through that depression there, and then go north to the Agua Prieta pass to the east, which is the north end of the Perrillo mountains, without going through the Gallardo pass.

Q. Don't you know as a matter of fact there is a pass in the Perrillo or Ceniza mountains right in the middle?

A. I do not think so; I think that the Perrillo mountains end about there, and there are simply low hills running to the Gallardo pass from that point to the north.

Q. And your idea is that this road is simply a spur around the Perrillo or Ceniza mountains used in order to reach this San Bernardino valley?

A. If I understand you, that pass is about the same as the Gallardo pass there.

Q. You say that this pass runs north and east of the Perrillo mountains, do you?

A. I think that from that point they are simply low hills to the Gallardo.

Q. If there is a pass running east and west from that main
125 range of the Perrillo or Ceniza mountains, it is a different pass from that which you described as being simply around the north end or spur of these mountains?

A. Yes, sir.

Q. And you say there is no pass running from the main range of the Perrillo or Ceniza mountains between this line here and the north end of these mountains?

A. No distinct pass, unless it is the same as the Gallardo pass; there are low hills in here.

Q. Now, Mr. Bonillas, don't you know, as a matter of fact, that running from this puerto de la misa, as has been described by Mr. Flipper, there is a well-traveled wagon road going to Fronteras and in that direction?

A. No, sir. I never knew a wagon road to go to Fronteras over there. There is no well-defined wagon road there that I know of.

Q. Fronteras is in what direction from Cerro Gallardo?

A. About southwest.

Q. Now, a person coming from Fronteras to San Bernardino has to come by the Agua Prieta on the road that you spoke of?

A. They come to Agua Prieta and then take this road running east. They also go from Fronteras along the Fronteras river, by San Mora, over to Cuquirachi and from the San Bernardino river up.

Q. So that in going north they go round the Perrillo or Ceniza mountains to Cerro Gallardo up to San Bernardino?

A. Yes, sir.

Q. If there is any accessible pass through the Perrillo or Ceniza mountains from the south, would not that be a shorter method of going from Fronteras to San Bernardino?

A. Yes, sir.

Q. Now, where is Bavispe?

A. It is about south from this point. Bavispe is right there, 80 to 100 miles south.

Q. And what was your statement about people coming from Bavispe?

126 A. They come in from the San Bernardino valley, and then through the Gallardo pass, and from Agua Prieta to Bavispe.

Q. This Misa pass being further south than the Cerro Gallardo, and if they went through the puerto de la misa from any point below San Bernardino and go through this Misa pass, they would be saving considerable distance, would they not?

A. If they could go that way from the San Bernardino valley, why they could make a bee-line to Bavispe.

Q. What is a pass, puerto?

A. A puerto I state to be a depression in a mountain chain through which you could go maybe with vehicles or horseback.

Q. A puerto is a pass through which people can travel either by vehicle or horseback?

A. Yes, sir.

Q. Where does the Gallardo pass end, towards the west?

A. I should think it would end about there; I have not made any measurements as to that; there is a valley leading up to these places both south and north of Gallardo.

Q. Where does it start going to the San Bernardino valley from the Agua Prieta valley?

A. I should think this valley runs clear to the Agua Prieta valley.

Q. Where does the pass start?

A. It starts, I should think, about a mile or so; perhaps 2 miles

west of Gallardo; it is where the hills are shaped so that you can go over them to go to the pass.

Q. Is that anywhere near this road from San Bernardino to Santa Cruz, that you have testified about?

A. That is what I am testifying about; that is the pass.

Q. This road that you give, laid down as the old overland road enters into this pass at its west entrance?

A. Yes, sir; its west entrance.

127 Q. Where does this old overland road go after leaving the Agua Prieta valley and going west?

A. It goes after leaving the Agua Prieta to what is known as the Antonio Baca water hole, or watering place, and from there the road forks, one part going south or southeast to Fronteras, the other part going west or northwest to Ramon Romero and thence to Santa Cruz.

Q. The road you take going to Santa Cruz goes by Romero and San Pedro?

A. Yes, sir; you can go from Romero two ways, on the south side or the north side, or the San Jose mountains, and from San Pedro this road goes out to the Santa Cruz valley, or else goes southwest through Sinarella to Santa Cruz.

Q. Where does this Gallardo pass which you say has its entrance a mile or a mile and a half west of the Gallardo cerro run with respect to the Ceniza or Perrillo mountains?

A. It extends from the Gallardo mountain south to the end of the Ceniza or Perrillo mountains; that is all that part that is south of the pass.

Q. I understand the mountains that follow to the north of the Gallardo were also called a part of the same range, of the Perrillo range, the Swisshelm mountains?

A. I believe they are called that now.

Q. Do I understand that this old overland road that you have got laid down here on your map follows this Gallardo pass through out its entire length?

A. It follows it from east to west, and to that part of the pass which is north of the Gallardo mountain.

Q. And the west entrance, then, of the Gallardo pass is where with respect to the Perrillo or Ceniza mountains?

A. To the north in Mexico.

Q. If the Perrillo or Ceniza mountains extend to the north of the Gallardo, it would simply go through them?

A. They are south.

128 Q. If the Perrillo or Ceniza mountains are south of the Gallardo, where does this pass run with respect to these mountains?

A. It would be north of them.

Q. You testified, did you not, that this road ran around the north end of these mountains?

A. What road are you speaking about?

Q. The old overland road.

A. Yes, sir; I think that road runs over the north end of it, as marked here in my map.

Q. What part of the Perrillo or Ceniza mountains is the Gallardo pass and these Swisshelm mountains?

A. They are the same range.

Q. Please indicate on your map just where the west entrance of the Gallardo pass is.

A. It is not marked; this map was made more for the purpose of determining the area, not to locate all the monument-of this grant, and not for the purpose of showing the topography; very little topography is shown, but I should think that its west entrance is, as I have said, perhaps a mile or mile and a half, maybe 2 miles, west of the Gallardo mountains.

Q. You have the Gallardo pass correctly indicated?

A. Yes, sir.

Q. I wish you would mark on your map where with respect to the Gallardo pass the point is at which you enter this pass going from west to east.

A. I could just as well close my eyes and make a mark; I could not determine it in that way.

Q. You are not able to say where this road enters the puerto de la Gallardo going from west to east?

A. I did not meander this valley.

Q. Give it to us approximately.

A. I could not do it; it is no use; I have said that it may be a mile or a mile and a half or two miles from that point.

Q. And in what direction?

A. To the west about a mile or a mile and a half.

129 Q. Is this old overland road correctly delineated here on this map?

A. Approximately; I did not run a traverse on that road.

Q. You spoke of an old distillery down there near the puerto de la Ceniza?

A. Yes, sir.

Q. What is the age of that distillery?

A. I could not tell you, but I know it was not in operation back in the early 90's. I know it was then abandoned.

Q. It was then abandoned?

A. Yes, sir; at that time they were both abandoned.

Q. Did you see that wagon road or trail on the east side of the puerto de la Ceniza going north?

A. No; I did not see any wagon road; there were no signs there in 1895.

Q. No signs of animals?

A. Yes, sir; signs of horses, mules, and cows.

Q. Was there a trail for saddle horses?

A. Yes, sir.

Q. And that trail goes to the puerto de la Ceniza?

A. Yes, sir; it goes to the puerto de la Ceniza and joins another trail which comes from the south end of the Perrillo mountains and is to the west and northwest of the Ceniza pass.

Q. There is another trail coming over there from the valley that comes through the Ceniza pass?

A. There is a trail going through very rough country towards the southeast; I went there two or three times on horseback; it is very rough.

Further direct examination by Mr. Ford:

Q. Will you translate this language: en una loma pequeñita que está á la derecha y inmediata á otras dos mas altas?

A. On a very small hillock or hill which is to the right and very close to two other higher ones.

130 Q. How near to this peak which you have termed the east center monument are there to the west any peaks higher than it?

A. Approximately this is a high hillock, and that loma alta to the west extends for a considerable distance, but I do not know that I can remember any hills as high as it is, or higher west of it, but about northwest from it there are some high hills there, high lomas and high cerros.

Mr. POPE:

Q. How far west did you say it extends?

A. It may extend for a mile or three-quarters of a mile.

J. H. SLAUGHTER, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. State your name and residence.

A. My name is J. H. Slaughter; Cochise county, Arizona, San Bernardino ranch.

Q. How long have you resided in that part of the Territory?

A. I have been in Cochise county since 1879. It was Pima county when I came there.

Q. Do you know the Perrillo or Ceniza mountains?

A. I know the Ceniza springs or mountains.

Q. Do you know a place called the Gallardo peak?

A. Yes, sir.

Q. Do you know a place called the Ceniza pass?

A. No, sir. I know where the Ceniza springs are.

Q. Do you know a road used by people to cross the Perrillo mountains going from the valley on the east to the Agua Prieta to Bisbee?

A. Yes, sir; I know that.

Q. Where does that road pass?

A. It comes right by my ranch and right south of Gallardo.

131 Q. Will you examine this map and state whether you have traveled over that part of the country often or not?

A. Yes, sir; I have traveled over it very often.

Q. What doing?

A. Gathering cattle all over that country.

Q. Do you know the place called Agua Prieta?

A. Yes, sir.

Q. Do you know the international boundary line?

A. Yes, sir.

Q. Place called Whitney?

A. Yes, sir.

Q. Please state with reference to that peak how these Perrillo mountains are crossed by people going from east to the west or west to the east.

A. They cross it south of the Gallardo; there is a wagon road going to Bisbee; that is the only road that I know of.

Q. Have you been there?

A. Yes, sir.

Q. How is it, if you know, at the present time with regard to people who live east of the Perrillo mountains—that is, all who wish to come to Bisbee; where do they cross the Perrillo mountains if they live south of the line?

A. They come to San Bernardino and go out by Gallardo; that is the only one I know.

Q. That is the only pass through these mountains as far as you know?

A. Yes, sir; for vehicles south of this Gallardo pass and between that and the Ceniza springs; south of the Gallardo there is no wagon road that I know of unless it is a timber road.

Q. Has there ever been any wagon road used south of the Gallardo by people crossing the mountains?

A. Not that I know of.

Q. Did you ever hear of a pass called the Misa pass?

A. No, sir.

Q. As far as you know, people in wagons crossing these Perrillo mountains cross through the Gallardo pass?

A. Yes, sir.

Q. They all cross there?

A. Yes, sir; with their wagons; it is east of these mountains here.

132 Q. Do you know where the boundary monument is?

A. Yes, sir; I have seen the monument.

Q. About how wide is this Gallardo pass, the whole pass?

A. It would be three or four miles, anyway; it goes down here and you cross in Mexico and up here you cross north of that Gallardo peak; in going to Bisbee you go north of it.

Q. How is it going through this Gallardo pass and the Swisshelm mountains as to any pass that can be crossed by wagons before you come to this College peak; is there any such pass?

A. Only that road going across to Bisbee that I know of; that is a mile and a half or 2 miles northwest; there is a road a little east of Sulphur Creek peak.

Q. Is Sulphur Creek peak and College peak in these Swisshelm and Perrillo mountains?

A. I think that is what they call them.

Q. Between this Gallardo pass that you have testified to as two or

three miles wide and this College peak, state whether or not there is any pass that can be crossed with wagons.

A. I do not know that there is after you get above the Bisbee road.

Q. And that is what you call Gallardo pass?

A. Yes, sir.

Q. And south of what you call the Gallardo pass you say there is no pass in the mountains where people cross with wagons between that and the Ceniza springs?

A. None unless it has been lately made there; I have never seen any across it; there is no wagon road; the only road that I know of is a wood road over there from the Mezcal ranch, unless there has been some made for hauling water or timber.

Cross-examination by Mr. POPE:

Q. You live at San Bernardino?

A. Yes, sir.

133 Q. About how far is this from the Gallardo peak?

A. It is about 8 miles.

Q. How far is it by wagon road?

A. It is a little more than 8 miles by wagon road, I think; probably 9 miles.

Q. What are these mountains north of Gallardo peak called running up into the United States up to College peak?

A. They call them Sulphur Creek peak and the Swisshelm mountains.

Q. Now you see the Ceniza mountains?

A. I do not see them. They would be here.

Q. From the Gallardo peak how far is it to the Ceniza mountains?

A. I think about ten miles from the Ceniza mountains; 8 to 10 miles from the Gallardo peak.

Q. You know as a matter of fact where what is called the puerto de Gallardo is located?

A. That is what I supposed was the road.

Q. Which road is that; the one south or north?

A. That would be south.

Q. Is there also a pass or opening north of Gallardo peak and between it and the Swisshelm mountains?

A. Yes, sir.

Q. There is a wagon road that runs right by the international boundary line?

A. Yes, sir; near there. It goes towards the custom-house.

Q. How far?

A. Close; I do not think it is over a mile and a half north of that peak.

Q. How far is international monument 82 from that road?

A. It runs very near; I suppose 800 yards.

Q. Is there any wagon road still north of that?

A. There is a wagon road running right straight due north, right straight across from San Bernardino.

Q. Does it run by this international monument 82?

A. It goes probably 800 yards north of the monument, and maybe more; it is all that far.

134 Q. And then there is another road on the south of Gallardo peak; where does that go to, running east and west?

A. That goes to the Morito custom-house.

Q. And the Bisbee road is the one that runs on to international monument and on the College peak?

A. Yes, sir.

Q. Well, now, as a matter of fact, a fence runs right on the line?

A. It runs right along on the boundary line.

Q. And there is a gate there where this fence on the road runs going north from this Gallardo peak?

A. Yes, sir.

Q. Have you ever been up in this section of the country from the Swisshelm mountains to the College peak?

A. Yes, sir.

Q. What is the next opening in the mountains going northwest from the Gallardo?

A. The next opening with a wagon?

Q. Well, for anything.

A. For horseback or trail there is a trail leads from the Gallardo to Sulphur creek.

Q. Where is Sulphur creek?

A. It is right there, east of College peak.

Q. Going from east to west, are there any passes between Gallardo and College peaks through which you can go on horseback or otherwise?

A. Yes, sir; a number of openings in these Swisshelm mountains.

Q. Where is the first place that you strike a wagon road going north between Gallardo peak and College peak? Where is the first place you strike after leaving international monument number 82, on the international line going from Gallardo peak north to College peak?

A. There are a number of them going on horseback; Ash springs or Hog cañon is the next place.

Q. Where is Ash spring?

A. It is right north of this Gallardo pass.

Q. How far north?

A. Not over 2 miles and a half. Then Hog cañon is the
135 next place you cross.

Q. Is that south of College peak?

A. Yes, sir; that is south.

Q. What is the first wagon road you strike going from the international boundary line north in that direction?

A. The first wagon road is leading up from the Sulphur creek and east of the Sulphur creek.

Q. Where did you say the Gallardo pass was with respect to the Gallardo peak, north or south of it?

A. It is south; I call this a pass over here.

Q. Did you ever go down to this puerto de la Ceniza?

A. I have been to the Ceniza spring, but I do not know the pass you speak of.

Q. A large, open pass about 6 or 7 miles south of Gallardo peak?

A. I have been all over the hills; I do not know anything about the name of the pass; I have been clear to Camou's on horseback.

Q. Now, is it not true that about northeast of the puerto de la Ceniza and about 2 and a half miles south of Gallardo peak there is an opening in the mountain range through which you can go on horseback or in a wagon?

A. I do not know about it.

Q. But as a matter of fact there is a pass north of the Ceniza pass?

A. You can go on horseback over any of these mountains.

Q. Do you know any place called the puerto de la misa?

A. No, sir; I do not know any except at the Ceniza springs.

Q. Where are they?

A. 8 or 10 miles south of Gallardo peak.

Q. You do not know of any puerto de la misa situated about 2 and a half miles or three miles south of the Gallardo peak?

A. I do not know it by that name; there may be such a place; I never heard of it until today after I came here; I have not been over there for 2 years, and the last time I was there there was no wagon road there.

136 Q. Where did you go then?

A. I think I came from Ceniza up by Gallardo.

Q. Where were you going to?

A. I came from Morita.

Q. Were you going from Morita to San Bernardino?

A. I came from my place after some outlaws and went to Morita and came by Gallardo.

Redirect examination by Mr. Ford:

Q. Have you been sheriff of Cochise county, Arizona?

A. Yes, sir.

Q. For how long?

A. Four years.

Q. You say you are thoroughly familiar with that mountain range?

A. Yes, sir.

Q. You say that a man on a horse can cross nearly any place in the mountains without trouble, but you know of no wagon road crossing these mountains except the one that you testified about in this Gallardo pass?

A. I know of no other crossing in the mountains.

Q. How long since you were there?

A. It has been over two years.

Q. Was there any road except at the Gallardo pass when you were there the last time?

A. No; not the last time I was there.

EDWARD CAMOU, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. Do you know a place called Agua Prieta, in Sonora?

A. Yes, sir.

Q. Do you know a mountain range called the Perrillo or Ceniza mountains?

A. Yes, sir.

Q. What direction is that from the Agua Prieta?

A. About east.

Q. Do you know a peak called Gallardo peak, Nigger hill?

A. Yes, sir.

Q. Do you know whether there is any pass in the Perrillo or Ceniza mountains at or near the international boundary line—is there a place there called Gallardo?

A. Yes, sir.

137 Q. You examine this map; do you see on that map a road called the old overland road?

A. Yes, sir.

Q. Do you know where San Bernardino is with reference to this?

A. Yes, sir; it is about east, I guess; I do not exactly know.

Q. And Bisbee is in what direction from Gallardo?

A. Bisbee is away down; I could not tell you; southeast.

Q. And about what direction is Gallardo peak?

A. About the same.

Q. And Arispe?

A. The same.

Q. Cuquiarachi?

A. Right east from there; it looks to me; I do not know.

Q. State whether you have ever crossed the Perrillo or Ceniza mountains from east to west or west to east.

A. I did.

Q. About where did you cross?

A. At the puerto de la Ceniza.

Q. How did you cross there?

A. Horseback.

Q. Did you ever cross at any other place in a vehicle?

A. No, sir.

Q. Did you ever cross at the pass called the Gallardo pass?

A. Many times.

Q. State whether or not there is a traveled road over that pass.

A. Yes, sir.

Q. Where is that road with reference to the Gallardo peak?

A. The old road is on the north of Gallardo, and the new road is on the south, just one side of the peak.

Q. Do you know, as a matter of fact, where people from Bavispe and Cuquiarachi, Batepito, and Bacuachi cross the Ceniza mountains in wagons going from these places?

A. At that pass, Gallardo; that is the only place.

Q. Is there any place south of this Gallardo pass where parties can cross in wagons?

138 A. No, sir; except going along the valley; there is a road there that has been used for wood at Almada, used for wood and mezcal plant; that is the only road there, and posts for fences; that is all.

Q. Is there any wagon road south of the Gallardo pass except roads that are used for wood and for the distillery crossing these mountains?

A. No, sir; not one.

Q. About how wide from north to south is this Gallardo pass; how many miles would you say?

A. I could not tell you that; I do not know.

Q. Did you ever hear of any place there called Misa pass?

A. No, sir; there is not such a thing as that as we know. There is what is called the agua de la misa.

Q. Where is the agua de la misa with reference to the Gallardo peak?

A. That is above two miles from there south.

Cross-examination by Mr. POPE:

Q. You saw Mr. Tipton and Mr. Flipper and myself down there this last month?

A. Yes, sir.

Q. Your father owns this Agua Prieta grant?

A. Yes, sir.

Q. You recollect my asking you as to some of these natural objects which you have referred to?

A. Yes, sir.

Q. And you said that you knew very little about the natural objects around there, but that you would send a man who did know about them?

A. I did.

Q. You sent Jesus Montaña, your mayordomo?

A. I did.

Q. He has been with you some eight years?

A. Yes, sir.

Q. He is thoroughly familiar with this section of country all around there?

A. On the lower part of the ranch he has been working most of the time in this place we have had rented all the time, and had very little to do there.

139 Q. You said that he was a person who was thoroughly familiar with the country around there and would describe these places to us?

A. Yes, sir.

Q. And he came down and went out with us?

A. Yes, sir.

Q. Have you been to this agua de la misa?

A. Many times.

Q. Where is that with respect to the Perrillo or Ceniza mountains?

A. Well, it is about there.

Q. On which side of the mountains is it?

A. On the west side; they would be about here.

Q. These mountains are laid down as the Perrillo or Ceniza mountains. Now, is it not true that this agua de la misa is on the east side of the Perrillo or Ceniza mountains?

A. Yes, sir.

Q. And after you leave this agua de la misa you go out through a pass in the mountains going to Fronteras?

A. No, sir; this road has been made lately and never goes to Fronteras or anywhere; this is just to go round to get wood and mezcal and the road has been made two or three years ago; that road goes around; it does not go through the mountains at all.

Q. You say, then, there is no road through the Perrillo or Ceniza mountains going from the agua de la misa?

A. No such road; no, sir; no such road.

Q. It don't cross the hills?

A. No, sir; impossible.

Q. There is no wagon road in there at this time?

A. Never; no.

Q. Do you know where this old overland road that is laid down here is located?

A. Yes, sir.

Q. Is that the road that is traveled going to San Bernardino?

A. Yes, sir.

140 Q. And it comes here near this international monument, and there is a road going also south of Gallardo?

A. Yes, sir; on the south side.

Q. In going from Fronteras to San Bernardino how do you go coming from the black-water valley and in going from Cabullona?

A. You could go different ways; you could go on the San Bernardino river.

Q. And generally that is the road that they are accustomed to go or use?

A. They go through Gallardo.

Q. And go round by the Agua Prieta valley to this old overland road that Mr. Bonillas has got on this map?

A. Yes, sir.

Q. Now, do you mean to say, then, that there is no means of getting through these mountains south of this Gallardo pass and between that and the puerto de la Ceniza?

A. Impossible with wagons.

Q. You are sure of that?

A. O, sure; no wagon road, never will be; no, sir.

Q. Did you ever go through the Gallardo pass down along the east side of the Perrillo or Ceniza mountains and across them to the Agua Prieta valley?

A. Yes, sir; many times.

Q. Where?

A. Yes, but not through the mountains.

Q. How does it go?

A. It goes, winds around.

Q. You never go in the mountains?

A. Never.

Q. After you get on the west side of the Perrillo or Ceniza mountains you go right to the Agua Prieta valley?

A. Yes, sir.

Q. So after you get through the mountains there is no difficulty in getting across to the Agua Prieta valley, is there?

A. No, sir.

Q. From the mountains the country is level?

A. It is not exactly level, but you can go on horseback.

Q. Now, you have been to the Agua Prieta?

A. Many times.

Q. Looking east from the Agua Prieta, due east from the
141 Agua Prieta, what main range do you see?

A. The Perrillo or Ceniza mountains.

Q. On the American side they are called the Swisshelm mountains?

A. Yes, sir.

Q. You say you have been through this puerto de la misa?

A. Yes, sir.

Q. How did you go?

A. On horseback.

Q. On a trail leading through the hills?

A. Yes, sir.

Q. There is an old wagon road there?

A. There never has been.

Q. It has been there since the distillery was there?

A. No, sir.

Q. Have you ever been through this puerto de la Ceniza down below the south end of the Perrillo or Ceniza mountains?

A. Yes, sir; on horseback.

Q. You have been through the puerto de la Ceniza on the east side of the puerto de la Ceniza, and then followed it up on the east side to the agua de la misa, did you not?

A. Yes, sir.

Q. And then there is a wagon road south of the Gallardo pass?

A. Yes, sir.

Q. Did you find a puerto through the mountains?

A. That is, I think, called the puerto de Gallardo; it is a kind of a draw.

Q. Is it not true, after coming through the Gallardo pass, that you cross a hill to go over into this pass, just a little, there is a good wagon road there?

A. Yes, sir; wagons for posts that are for fences, but for no other purpose.

Q. That is the same wagon road that is laid down here on Mr. Bonillas' map?

A. No, sir; this other road comes over here all the way.

Q. I will get you to indicate just how that other road comes that you say is used for hauling posts.

A. I do not know where it would be exactly, but from Gallardo it

is right about here; it joins this road that crosses the puerto de la misa and then comes along there, and then you go through a big draw and then you go to the valley.

142 Q. You say that valley crosses around the north end of the Perrillo mountains?

A. It don't cross the Perrillo mountains. It passes over here from Gallardo, and also to this black-water valley.

Q. This wagon road that you say leads to the agua de la misa is a different road?

A. Yes, sir; that is to the north.

Q. This is a very new road?

A. Yes, sir; to get mezcal plant and wood.

Q. This mezcal ranch is some distance from Gallardo?

A. Yes, sir; about 2 miles, I guess; something like that.

Q. Towards San Bernardino?

A. Yes, sir.

Q. That is on the main road, this overland road that Mr. Bonillas has got marked here?

A. Yes, sir.

Q. All the travel along from the mezcal ranch westward is along this overland road on which you go to get to this road through Gallardo pass and going down south to the agua de la misa?

A. Yes, sir.

Q. Then this wagon road that runs from Agua Prieta, that does not cut through the Perrillo mountains at all? I am talking about a wagon road that runs south of Mr. Bonillas' road. That does not cut the Perrillo or Ceniza mountains at all?

A. No, sir.

Q. You swear to that?

A. O, yes; sure.

Q. How long since you have been out there?

A. Since the year '90.

Redirect examination by Mr. FORD:

Q. Do you know a place in the Swisshelm or Perrillo mountains about at a place laid down on this map called the Aguas Caliente?

A. They call them hot springs.

Q. Is there any pass in these mountains, so far as you know, between the Gallardo pass and that pass?

A. I know that one, although I have never been through
143 it. I have been to the waters two or three days before I came. I was there.

Q. Do you know the Mexican or Spanish name for that pass on the northeast corner?

A. Well, I tell you always they call it that way, but some others they call it different names other times.

MAY 14TH, 1899—10 a. m.

Mr. POPE: I desire to tender in evidence a certified copy of an expediente from the office of the district court at Guaymas, Mexico,

of a suit between Petaco Elias *et als.* and the Messrs. Camou Brothers, involving the ownership of this Agua Prieta tract (marked Defendant's Exhibit H).

Objection made to it because it is extraterritorial; it is limited to the land in Mexico.

The Government also desires to tender in evidence a map of the county of Cochise, Arizona, made by H. G. Howe, and especially that portion of the map lying south of the 4th standard south as marked thereon (marked Defendant's Exhibit I).

No objection.

Mr. Ford tendered in evidence a letter applying for the withdrawal of certain papers from the surveyor general's office and accompanied it with oral testimony showing that these papers had actually been withdrawn. I do not know whether there is an admission of record as to the withdrawal. At any rate, we desire to withdraw any admission. In order that the records may be straight, we tender here in evidence a certified copy of the receipt given by Mr. Camou to the surveyor general for those papers and a letter attached thereto making a request for those papers (marked Defendant's Exhibit J).

144 WILLIAM M. TIPTON recalled for the Government.

Mr. POPE :

Q. I wish you would look at this map tendered in evidence in this case as Plaintiff's Exhibit P 1, being map made by Ygnacio Bonillas, and testified to by him. You see where the peak denominated "Gallardo" is located on that map, do you?

A. Yes, sir.

Q. Did you at the time you were at the agua de la misa take a bearing from the agua de la misa to this Gallardo peak?

A. Yes, sir; I did.

Q. What did you find the bearing to be?

A. I can only tell that from the note that was made of the bearing at that time. The bearing of the top of the Gallardo peak, as taken from the water hole known as agua de la misa, was north 1 degree 7 minutes east, magnetic.

Q. What is that on a true course?

A. That would be north 13 degrees 9 minutes east, true.

Q. Did you estimate the distance from this agua de la misa to the Gallardo peak?

A. Yes, sir.

Q. What is that estimate?

A. Somewhere between 2 and 3 miles.

Q. I wish you would protract on that map, taking the course to which you have just testified, and at a distance of 2 and a half miles from Gallardo peak, and upon that basis locate this agua de la misa on that map.

A. The point which I mark on this map with the letter Z, which point is immediately below the letter e in the name Ceniza, written in the topographical location of the main range, is a point scaled 2

and a half miles from the Gallardo peak, and in the direction south 13 degrees 9 minutes west, being the reverse of the course taken from the agua de la misa to the top of the peak.

Q. Now you have testified in your former examination as to the fact that this road going through the puerto de la misa joins
145 another road going through the Gallardo pass in the vicinity of Gallardo peak. I believe you have testified to that fact?

A. Yes, sir; I have.

Q. I wish you would indicate on that map, according to your best recollection, where that point joins it with respect to that Gallardo peak as laid down by Mr. Bonillas on this map.

A. I have indicated on the map the point referred to by the letter Y.

Q. I wish you would indicate the course of the wagon road between these two points you have indicated Y and Z.

A. I have indicated on the map the road referred to by a line showing the course of that road going westward between the points Y and Z.

Q. Now, I wish you would indicate on that map the course of that road going westward from the point Z through the mountains.

A. I have indicated the course of that road by a line from the point marked Z to a point which I now mark X.

Q. Does that point marked X by you represent the termination of that road, or simply a point on the road after you get out on the west side of the mountains?

A. It simply represents a point on that road as far as I followed the road which was south and west from the place called agua de la misa, and on the foot-hills at the west base of the mountains.

Q. Where does the trail or road you took to go to the Agua Prieta, as to which you testified, branch off from that place with respect to that place marked X?

A. At the point marked X.

Q. Does this road, which you have marked X Z Y, pass around the north end of the mountains or through the mountains?

A. It passes through the mountains.

Cross-examination by Mr. Ford:

Q. This point Z, as arrived at by you, is just by the suggestion of the attorney, is it?

146 A. The point is at the distance from the top of Gallardo peak, as represented on this map, at which Mr. Pope told me to mark it, which was 2 and a half miles, I having formerly testified in this case that in this case the distance between these points was between 2 and 3 miles.

Q. That is a mere estimate of yours, is it?

A. Yes, sir; it is.

Q. What do you base that estimate on?

A. From having looked toward the one point while at the other.

Q. Would you say the point is correct within half a mile one way or the other?

A. This point Z?

Q. Yes, sir; or might the point be really only 2 miles?

A. I do not know anything about that with accuracy; it is simply an estimate, as I have already stated.

Q. You made a running and jumping estimate?

A. I made the only kind of an estimate that can be made under the circumstances, and in my opinion it was between 2 and 3 miles.

Redirect examination by Mr. POPE:

Q. You said that you made an estimate of the distance; did you go over the distance between these two points?

A. I went over the distance between the two points three times in a wagon.

Q. Is your estimate of it based to some extent on that fact?

A. That is my opinion. The first estimate—the first opinion I formed in my mind was while standing at the place called agua de la misa and looking out towards the Gallardo hill over the intervening country as far as I could see it. Subsequently I traveled over the road two times after this first trip, and noted the time that it took me to drive it, and from that principally I formed my opinion as to the distance.

Q. Is the point Z with respect to the Gallardo peak as laid
147 down here a matter of actual observation on the ground?

A. It is a matter of actual observation on the ground with the transit.

HENRY O. FLIPPER recalled by Mr. Pope:

Q. I believe you testified as to having investigated this Agua Prieta tract on the ground?

A. Yes, sir; I was on that tract.

Q. Did you go to the Gallardo peak and the agua de la misa?

A. I went to both places; yes, sir.

Q. Did you take an observation from the agua de la misa to the top of the Gallardo peak?

A. Yes, sir.

Q. What was the bearing?

A. Being at the agua de la misa on the 3rd day of the present month of May with my transit, I took the bearing from the agua de la misa to the summit of Cerro Gallardo; that bearing is north 1 degree 7 minutes east, magnetic.

Q. What is the true course?

A. The true course, with a variation of 12 degrees 2 minutes east, would be north 13 degrees 9 minutes east.

Q. Did you take the variation?

A. I took the variation myself; yes, sir.

Q. How did you take it?

A. I took it with the solar attachment with Gurley's transit, observation on the sun.

Q. You have spoken of a road running through the mountains at the agua de la misa joining another road on the south side of the Gallardo peak?

A. I have: yes, sir.

Q. With reference to the Gallardo peak, as laid down on this map, where would be the junction of these two roads, in your judgment?

A. It would be at about the point marked Y on this map.

Q. And on a course, as testified to by you, at a distance of 2 and a half miles south from the Gallardo peak, as laid down on this map, where, in your opinion, would the agua de la misa be situated?

148 A. The agua de la misa would be situated on that course south 13 degrees 9 minutes west from the summit of Cerro Gallardo and 2 and a half miles south at the point marked Z on this map.

Q. How does the road or line laid down as Z Y on this map conform to your recollection of the road between the point Z and the point Y?

A. That line represents the course of the road as I recollect it.

Q. And after leaving the agua de la misa how does the road lie going westward through the mountains?

A. It runs about as represented on this map by the line Z X.

Q. Does the road run through the mountains or on one side?

A. The road runs entirely through the mountains from one side to the other side.

Q. And in respect to what opening?

A. It runs through the pass known as the puerto de la misa.

Q. Were you at the point marked X?

A. I was also at the point marked X.

Q. From the point marked X, going westward, is there any means of egress either for horses or wagons over a road?

A. At the point X I left a well-defined wagon road going toward the southwest toward the valley, and I went myself to the point marked Sulphur Springs on this map.

Q. Were there any evidence of a road or trail going that way?

A. Wagons had been over that route; it was not a well-defined wagon road.

Q. It was not a trail?

A. It was what had been a trail.

COLIN CAMERON, sworn on the part of the plaintiffs, testified, upon direct examination by Mr. Ford, as follows:

Q. State your name, residence, and business.

A. My name is Colin Cameron; residence, Lochiel; ranchman.

Q. Where is this place where you reside?

A. The southern part of Santa Cruz county, on the south of Arizona; immediately to the north line of Sonora.

149 Q. How long have you lived at that place?

A. Since 1882.

Q. Do you know a place called Agua Prieta?

A. Yes, sir.

Q. Where, in a general way, is it?

A. Well, it is—the immediate point of Agua Prieta is in Sonora, northern part of Sonora, south of the south end of the Sulphur Springs valley.

Q. Do you know any mountain called the Ceniza mountains?

A. Yes, sir.

Q. Where are they with reference to the Agua Prieta?

A. East of it.

Q. Do you know where the Naidenibacachi mountains are?

A. Yes, sir.

Q. State to what extent you have traveled over Pima and Cochise counties, Arizona, and the State of Sonora, Mexico.

A. I have been over them more or less continuously since 1883.

Q. Do you know where the town of San Bernardino is, in Arizona?

A. Yes, sir; it is a ranch in the United States by that name.

Q. Where Mr. Slaughter has his place of business?

A. Yes, sir.

Q. Do you know a road going from Santa Cruz to San Bernardino?

A. Yes, sir.

Q. Both of the present residence of Mr. Slaughter and the old place?

A. Yes, sir; his house is northwest, but right in that vicinity.

Q. How does that road go and where does it pass the Ceniza mountains?

A. It goes to the north of the Ceniza to a gap in that mountain.

Q. Do you know the name of that gap?

A. Yes, sir; where the wagon road goes through Gallardo.

Q. Examine the map made by Mr. Bonillas and state whether or not the Gallardo peak is correctly designated, so far as you know.

A. Yes, sir; it is.

Q. Have you ever been through that pass; if so, how often and when?

A. I have been through that many times on horseback and wagons.

150 Q. How does that road going to San Bernardino lie with reference to that Gallardo peak?

A. The present road goes through on the south side, the present traveled road; most of the travel, at least.

Q. State whether or not you can go by any other road going through that pass, and, if so, where it passed with reference to the Gallardo.

A. The old road went on the north side, the first road, of Gallardo peak.

Q. You look at that pass from the west in approaching it?

A. Yes, sir.

Q. Is there any resemblance to a saddle, this pass?

A. No, sir; it is a great big peak standing up against mountains. There is nothing there to indicate a saddle.

Q. Did you ever hear it called Saddle or Ceniza pass?

A. Never did. I don't think it ever was called that.

Q. Is there any pass in Cochise county that resembles a saddle? If so, state where it is as nearly as you can.

Objection. Question withdrawn.

Q. Do you know any pass in the Ceniza mountains or elsewhere called Misa pass?

A. I do not.

Q. Did you ever hear of any pass called the Misa pass?

A. Never did.

Q. Have you ever crossed these mountains south of the road passing by Gallardo peak?

A. Horseback I have.

Q. Any other manner?

A. No, sir.

Q. State whether or not it is possible to cross them in a vehicle.

A. No place south of that wagon road until you get way down here to the river, many, many miles south.

Q. Please look at the point designated on that map by the letter X, and state whether or not it is possible to cross these mountains with a wagon entering at the point called X; if so, where the wagon must come out.

A. Well, you know it is possible to go any place with a wagon if you got the means and take the time to do it, but there is no practical wagon road through it; but I do not know that that is exactly the place, because I did not think about it at the time; but you can drive through this same Gallardo pass, perhaps, a little further east than that point.

Q. I am speaking of going to San Bernardino.

A. You could not do it at all.

Q. Why not?

— They would go up there to this road where they could go, and not attempt to go where they could not.

Q. Have you ever been to the southeast of Gallardo and in the State of Sonora to the towns of Arizpe and others there?

A. Yes, sir.

Q. Do you know, as a matter of fact, what road is taken by persons from these places and others in the same general locality to go to Bisbee?

A. Yes, sir.

Q. Where do they cross the Ceniza mountains?

A. Through the Gallardo pass.

Q. No other place?

A. Not with a wagon; no other place; no, sir.

Q. When did you first cross these mountains?

A. The first time in 1886.

Q. Have you ever been at or near the place marked X, as far as you can judge from the topography; the place is about 2 miles and a half south of Gallardo?

A. I do not know whether this is the place or not. I have gone through a trail; you can go through on horseback; that leaves the

San Bernardino river south of where the wagon road does and come out south of Gallardo pass, but where that place X is I do not know; the trail don't run in that direction; the trail runs in a northwestern direction.

Q. When did you say you first crossed these mountains?

A. In 1886. I may have been across there in 1883, but I do not now recollect.

152 Q. State whether or not you have crossed the Ceniza mountains since 1886 on horseback at or near the place marked X, approximately 2 and a half miles south of Gallardo.

A. If that is intended to represent the place where this trail comes out, I have been; if it is somewhere else, I have not been; I do not think the place is as far south as that, but perhaps it is exactly the place where the trail comes out.

Q. When were you at that place where the trail comes out?

A. The last time I was there was in the fall of last year, September; I was bringing a bunch of cattle to see whether we could bring the cattle over or not.

Q. What was the result?

A. It was impossible to bring them over; no man would attempt to move a herd of cattle over there.

Q. For what reason?

A. The road is so rough and it would take too long; it is just a trail for horseback.

Q. State whether you have ever seen any traveled wagon road at or near the place marked X entering the Ceniza mountains.

A. Not for the purpose of going through to the San Bernardino river; I do not think I ever saw a wagon trail there.

Q. Did you or did you not know whether at the time you were first at the place marked X there was any wagon road there or wagon tracks?

A. No wagon tracks if this represents the trail; no wagon tracks going through; it is utterly impossible for them to go.

Q. Did you state whether you know as a matter of fact how people from Batepito go to Bisbe?

A. Yes; they go through the Gallardo pass.

Q. After entering at or near that place marked X from the west how is it necessary to go, if traveling in a wagon, to go to San Bernardino?

A. You go as this shows; you go right up through the
153 Gallardo pass, and that may be the very place in the mountains that I spoke about; you could go down here; there is another range of mountains over further here.

Q. Do you know the roads from Santa Cruz to San Bernardino?

A. Yes, sir.

Q. How do the people travel going through this pass?

A. They go from Santa Cruz to San Bernardino, and from San Bernardino to Lampito, and from Lampito they follow this road that is marked down until about here, and then go south of the Gallardo pass and south of the Gallardo pass to San Bernardino.

Q. Do these people go by Fronteras, if you know?

A. No, sir; they do not.

Q. And how would such a road be as to length and convenience compared with the route you have just described?

A. To go from Fronteras it would be entirely out of the road. It is a good day's ride south of Fronteras.

Cross-examination by Mr. POPE:

Q. You say you live at Lochiel ever since coming out to this country?

A. Yes, sir; I live at Lochiel.

Q. You are the claimant of a grant before this court covering the Lochiel country, the San Rafael de la Zanja grant?

A. Yes, sir.

Q. What interest have you in this Agua Prieta grant?

A. I cannot tell you exactly what interest I have.

Q. What is the extent of your interest?

A. Very small, I think.

Q. You have an interest?

A. Yes, sir.

Q. Do you know how far it is from Lochiel to San Bernardino?

A. Well, it is, I guess, about something over a hundred miles, I suppose. I have ridden it in a day.

154 Q. This country, then, is something like a hundred miles from your place?

A. Yes, sir.

Q. So that you have not had occasion to go constantly out there?

A. I am entirely familiar with it, if that is what you want.

Q. I asked you to the extent to which you had occasion to be constantly out there.

A. I have ranched south of it here since 1888 and I have passed and repassed it time and again, and since I have an interest in this Agua Prieta, why, of course, as I go along I look at it and ask about it and enquire of persons for the names that had knowledge of it.

Q. Now you have spoken of having crossed the Ceniza or Perrillo mountains at the Gallardo pass?

A. Yes, sir; I have crossed it at this place with wagons and with cattle, on horseback.

Q. How far is the next trail south of that?

A. I suppose it is about 2 miles, maybe 3 miles, south.

Q. Do you know a puerto de la Ceniza?

A. Yes, sir.

Q. Have you been through that?

A. No, sir.

Q. You have been through the Gallardo pass and through this pass 2 and a half miles south of that?

A. Yes, sir.

Q. The puerto de la misa is a well-defined pass. This pass 2 and half miles south of the Gallardo pass—is that an accessible pass?

A. It is a pass that you can go through, and if a man is in a great hurry he could go quicker on the other side of the river, but a man,

unless he has some urgent business, he will always ride the wagon road.

Q. You have been through this pass?

A. On horseback three or four times; yes, sir.

Q. Do you remember a water hole on that pass?

A. Yes, sir.

Q. Where?

A. That is on the east side, I believe, of the range.

155 Q. What is the name of that water?

A. I do not know as I ever heard it called anything at all.

Q. Is that right on the road going through that pass?

A. It is just by the trail.

Q. About how far is this water hole from the Gallardo peak?

A. After you get below the Gallardo, I do not know how far that distillery is. There is sufficient water to water a little bunch of cattle.

Q. West of the distillery is there any water?

A. Not at all times; one time I brought through a bunch of cattle; that was below where the distillery is; generally there is no water.

Q. Where is Carbullona?

A. It is south; way south; right down this valley—the Agua Prieta valley.

Q. Where is Los Sauces?

A. That is further down.

Q. As a matter of fact, it is rather southwest from Los Sauces, is it not?

A. It may be according to your compass. It is south, I know; a great deal south.

Q. And where is Fronteras with respect to Carbullona?

A. It is further south yet.

Q. People going from Fronteras or Cabullona to San Bernardino, going up the Agua Prieta valley and going across the mountains on the trail which you have just described as being 2 and a half or three miles south of Gallardo and comes into the road at Gallardo, would get a shorter way than going north up the valley to this old overland road, would they not?

A. If there was a way to get through the mountains they would.

Q. Do you mean to say there is no wagon road on this pass?

A. There might be one now. I have not been there since last fall; it is possible to get a wagon road any place, but there never was one there.

156 Q. You never used one down there, at any rate?

A. No, sir.

GAVINO ARRIGA, sworn on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. Where do you live?

A. At San Lazaro.

Q. Where is that with respect to Santa Cruz?

A. It is all along the river downward or below.

Q. How far from Santa Cruz?

A. I do not know how far it is exactly; perhaps it may be three leagues.

Q. Where were you born?

A. In Santa Cruz.

Q. Where have you lived since then?

A. I have lived in Santa Cruz.

Q. Ever been to San Pedro?

A. Yes, sir.

Q. How often have you been to San Pedro; once or more than once?

A. I do not remember; I have been there several times.

Q. When did you first go there?

A. I was about 18 years old when I was there.

Q. Eighteen years of age?

A. Yes, sir.

Q. Do you know when wagons were first used in Sonora and the section around Santa Cruz?

A. The first wagon that I saw at Santa Cruz belonged to the first Americans who passed on the boundary commission.

Q. Were wagons in use at that time or prior to that time in the State of Sonora?

A. I did not know Sonora at that time; perhaps they were used, and perhaps they were not; I do not know.

Q. Were they used around Santa Cruz?

A. No, sir.

Q. Were there any wagon roads coming into Santa Cruz at that time?

A. No, sir.

Q. Was there any wagon road from Santa Cruz to San Bernardino at that time?

A. The one that was opened by the Americans.

Q. Was there any before that time?

A. No, sir.

157 No cross-examination.

SANTA FE, NEW MEXICO, *June 8th, 1899.*

I hereby certify that the above and foregoing 105 pages contain a full, true, and correct transcript of all the testimony I took down in shorthand on the trial of the above-entitled case.

W. J. McPHERSON,
Official Stenographer.

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PLAINTIFF'S EXHIBIT "A."

Republica Mexicana 1894, 1895, Timbre Cincuenta Cs. Mexico
 Tesoreria General del Estado.

Un sello que dice—Estado libre de Occidente—Sello tercero—Dos reales—Para los años de 1831 y 1832—Senor Tesorero General del Estado—Los Cuidadanos Juan Rafael é Ygnacio Elias Gonzales, ante Vd comparecen por medio de la presente instancia diciendo: que en los terrenos de San Pedro Y Cienego de Heredia que les pertenece en Jurisdiccion del Presidio de Santa Cruz, tienen eria de ganado mayor y de lana, cuyo numero actualmente no pueden mantener los sitios que les pertenecen, conforme es notorio y publico—Por esta causa, sus ganados se les diseminan por los cuatro rumbos pero muy particularmente para las aguas de Santa Barbara, Naydenivacachi, Agua Prieta y Coaguayona, con lo que recientes perjuicios incalculables, porque como realengos, se introduce á tales terrenos libremente el que quiere recoge, corre y está en actitud para proceder como guste sin que sea necesario nuestro consentimiento ni permiso de lo que son muy consiguiente, desaijes, robo, y que los mismos ganados se auventen mas y mas—Para obiar semejantes perjuicios y daños, y para que los terrenos de nuestros criaderos sean suficientes al numero de ganados que hoy tenemos, y debe aumentarse progresivamente, a pésar de los continuados daños que causan los Yndios enemigos de guerra, nos hallamos en el saco de poner formal denuncia conforme lo efecutamos al terreno que resulte realengo dentro de los puntos y aguajes citados: los que lindan por el Norte, con la Sierra de Chiricagua, por el Sur, con terreno de los Sinaloas, por el Oriente, con la Sierra de Coaguayona; por el Poniente, con terrenos de Saus Por tanto—A Vd pedimos y suplicamos se sirva conforme á la ley de 20 de Mayo de 1825 y á la facultad que le concede su artículo 22, admitirnos el denuncia que hacemos a los citados terrenos, y expedir el correspondiente decreto para sus medidas, avaluo, pregones, remates y demas que corresponde

159 se ejecute hasta la expedicion del título, protestando satisfacer los derechos, costas y lo necesario &c. Arispe, Julio 21 de 1831—Juan Elias Gonzales—Rafael Elias—Ygnacio Elias—rubricas—Hermosillo, 12 de Agosto de 1831—Por presentado y admitido en cuanto ha lugar en derecho; y para librar la comision de mensura que estas partes solicitan en los terrenos baldios de Santa Barbara, Naydenivacachi, Agua Prieta y Coaguayona, promuevanse previamente por esta Tesoreria, los informaciones y datos que son necesarios, en conformidad de lo dispuesto por la ley de la materia. El Tesorero General del Estado—Jose Maria Mendoza así lo Proveyo, mandó y firmó con testigos de asistencia á falta de Escribano segun derecho—Mendoza—A—Mariano Romo—A—Bartolo Miranda—rubricas—Año de 1831—Estado de Occidente—Informacion seguida á cerca de que si se deben mercenar a favor de los Sres. Elias los Puntos de Naydenivacachi y la Agua Prieta sitios en la Frontera de los Apaches—Tesoreria General del Estado de Sonora—Los Cuidada-

nos Juan, Rafael é Ygnacio Elias Gonzales, dueños de los terrenos de San Pedro y Cienega de Heredia en jurisdiccion del Presidio de Santa Cruz han dirijido á esta Tesoreria General, la instancia que á la letra copio—"Sr. Tesorero General del Estado—Los Cuidadanos Juan, Rafael é Ygnacio Elias Gonzales, ante Vd comparecen por medio de la presente Instancia diciendo: que en los terrenos de San Pedro y Cienega de

(Stamp same as before.)

Herediaque les pertenece en jurisdiccion del Presidio de Santa Cruz, tienen cria de ganado mayor y de lana, cuyo numero actualmente no pueden mantener los sitios que les pertenecen, conforme es notorio y publico—Por esta causa, sus ganados de les diceminan por los cuatro rumbos, pero muy particularmenye para las aguas de Santa Barbara, Naydenivacachi, Agua Prieta y Coaguyona, con lo que recientes perjuicios incalculables por que como realengos se introduce a tales terrenos libremente el que quiere, recoge, corre y

está an actitud para proceder como guste sin que sea necesario
160 nuestro consentimiento ni permiso, dé lo que eson muy consiguiente, desajjes, robo y que los mismos ganados se auyenten mas y mas—Para obiar semejantes perjuicios y daños y para que los terrenos de nuestros criaderos sean suficientes al numero de ganados que hoy tenemos y debe aumentarse progresivamente á pesar de los continuados daños que causan los Indios enemigos de guerra nos hayamos en el caso de poner formal denuncia conforme lo ejecutamos al terreno que resulte realengo dentro de los puntos y aguajes citados, los que lindan por el norte con la sierra de Chiricagui, por el Sur con terrenos de los Sinaloas, por el Oriente con la sierra de Coaguyona, y por el Poniente con terrenos de Saus: Por taato—A Vd. pedimos y suplicamos se sirva conforme a la ley de 20 de Mayo de 1825, y á la facultad que le concede su artículo 22 admitirnos el denunció que hacemos á los citados terrenos, y expedir el correspondiente decreto para sus medidas, avaluo, pregones, remates y demas que corresponde se ejecute hasta la expedicion del titulo protestando satisfacer los derechos, costas y lo necesario, &c. Arizpe Julio 21 de 1831—Juan Elias Gonzales, Rafael Elias—Ygnacio Elias"—Y lo inserto á Vd para que con vista de ella, y con arreglo á lo prevenido en la segunda parte del art'o. 23 de la ley numero 30 de 20 de Mayo de 1825, se sirva Vd. recibir una informacion de tres testigos de practicos conocimientos, imparciales y de toda excepcion sobre los puntos siguientes—

1º. Si los interesados en la preinserta solicitud, tienen la abundancia de ganado mayor y de lana que manifiestan—2º—Si positivamente no les son suficientes para mantener dichos bienes los sitios que poseen en San Pedro y Cienega de Heredia—3º. Si por consecuencia tienen necesidad del todo, ó parte de los terrenos y aguajes baldios que denuncian en Santa Barbara, Naydenivacachi, Agua Prieta y Coaguyona, conlindantes por el Norte con la sierra de Chiricagui, por el Sur con terrenos de los Sinaloas, por el Oriente con la sierra de Coaguyona, y por el Poniente con terrenos del Saus,

segun refieren los interesados—4°—Si algunos de los baldios nominados, se hallen fuera de la linea de los presidios fronterizos, expresando cuales sean; ó si no hay ninguno en tal situacion—En caso de que la informacion que Vd recobe sobre los puntos relacionados, no diese toda la instruccion que es conveniente y desea esta Tesoreria, podra Vd pedir informes relativos a los Alcaldes de politica de Santa Cruz y Tubac; y concluidas que sean todas estas diligencias me las remitira Vd oportunamente, informandome lo que le conste y sepa sobre su contenido, para que todo obre en esta oficina (stamp same as before) los efectos conducentes, segun la ley de la materia—Dios y Libertad, Hermosillo 12 de Agosto de 1831—José Maria Mendoza—rubrica—Sr. Alcalde 2° de la ciudad de Arizpe—Arizpe Agosto 26 de 1831—Por recibida la anterior comunicacion del Señor Tesorero General del estado, fechada en doce del corriente, é impuesto de su contenido, procedase por mi conforme al interrogatorio que abrazan las cuatro prevenciones de que se hace referencia por S S^a a tomar informaciones de tres sugetos idoneos é imparciales y de conocimientos practicos sobre el denunciado de los terrenos elevados por los Ciudadanos Juan, Rafael é Yganacio Elias Gonzales; y si por las deposiciones de estos tres testigos no fueren satisfechos los deseos del mismo Señor Tesorero General, oficiese á los Alcaldes de Policia de Fronteras y Cuguiarachi a cuyas jurisdicciones pertenecen los terrenos denunciados, para que ministren las luces que en el caso sean necesarias. El Ciudadano Ynocencio Buitron Alcalde 2° en 1° de esta ciudad, asi lo provey, mande y firmé con testigos de mi asistencia segun derecho—Ynocencio Buitron—A—Jesus Villascusa—A—J. M^a Villascusa—rubricas—En seguida mandé comparecer ante mi al Ciudadano Luis Yberri vecino de este comercio conocido y bien recibido por su honrada conducta le tomé juramente que hizo por Dios Nuestro Señor y una señal de Cruz en debida forma bajo de cuyo cargo ofrecio decir verdad en todo lo que supiere y fuere preguntado, y siendolo con arreglo a los cuatro puntos que abraza el interrogatorio del Señor Tesorero General del Estado en su citado orden, respondió al primero. Que sabe y le consta tienen bienes abundantes de una y otra clase

162 y mas de ganado mayor—Al segundo dice que la abundancia de dichos bienes es en tanto numero que se salen de los puntos que los interesados denuncian por que los sitios de Sn. Pedro y Cienega de Heredia no son suficientes para sostenerlos—Al tercero: que por hallarse diseminados las bienes de los denunciantes, en los terrenos que registran y aun fuera de ellos, supone halla una necesidad de ocupar en propiedad los enunciados terrenos de Santa Barbara—Al cuatro: responde que todos ellos se hallen para de los egidos de Presidio, pues el mas inmediato que es el de Caluigona dista del de fronteras siete leguas al Norte. Que es cuanto sabe sobre el particular y puede decir en fé del juramento que tiene otorgado y firmo con migo y los de mi asistencia doy fé. Ynocencio Buitron—Luis Yberri—A.—Ant^a. Apalategui—A—Jesus Villascusa—rubricas—Inmediatamente fue presente el Co. Teniente Comandante de la Compania de Infanteria de Bavispe Teodoro L. de Aros, le tomé juramento bajo su palabra de honor y ofrecio decir

verdad sobre todo lo que supiere y fuere preguntado y siendolo con arreglo á los interrogatorios que el Señor Tesorero General encarga, respondió al primero—que tiene bienes abundantes tanto de ganado vacuno como lanas—Al segundo respondió: Que los terrenos de Sn. Pedro y Cienega de Heredia no prestan cabida ni estalages para el considerable numero de semovientes, causa por que se han diseminado por diversos puntos—Al tercero respondió: haber en su concepto una necesidad de adjudicarseles los terrenos denunciados ya por que con su poblacion se cubre la frontera, y ya por que los ganados de los Sres. Elias estan internados en los terrenos solicitados—

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Al cuatro respondió: que el punto mas inmediato á la linea de Presidio, es el de Cahuiyona, y la distancia de este á Fronteras podra ser de siete á ocho leguas, de donde se resulta hallarse fuera del fundo legal designado en el reglamento particular de Presidios, y en el decreto posterior mente dado por el Honorable Congreso del Estado Unido. Y no haciendosele otras preguntas y satisfaciendo en las dadas la orden del Señor Tesorero General, firmó esta deposicion con migo y los testigos de mi asistencia con quienes actuo en forma de derecho, doy fé—Ynocencio Buitron—Teodoro L. de Aros—A—Ant^o. Apalategui—A—Jesus Villascusa—rubricas—An seguida mende comparecer ante mi y en mi Juzgado al C^o. Manuel Bustillos vecino de esta ciudad y de las cuallidades necesarias al efecto segun lo dispuesto por el Sor. Tesorero General, a quien le recibí juramento que hizo por Dios Nuestro Señor y una senal de Cruz, bajo cuyo cargo ofreció decir verdad en todo cuanto supiere y fuere preguntado; y siendolo al tenor del interrogatorio del pedido de dicho Sor. Tesorero dijo al primero de sus articulos: que es efectivo que la fuerza de bienes que poseen los tres Señores Elias en la hacienda de San Pedro y Cienega de Heredia, no caben en los terrenos que tienen mercenados, y no tienen mas recursos para contenerles que formar estancias en los aguajes de Naydeviva-cachi y Agua Prieta cuyos puntos que en al dia se hallen despoblados, conviene muy bien que se mercenen á favor del primero que se presente por estar en la frontera de los enemigos; por lo que es de opinion el declarante que es muy justo que se adjudiquen los citados aguajes á los que los denuncian a traque de que los pueblen—Al segundo dice: que ya deja referido que los sitios que tienen no son suficientes para el sosten de sus bienes y por lo mismo son necesarios los sitios que denuncian—Al tercero dice: que mercenandoseles á los interesados los puntos que resultan baldios en los parages señalados, a mas de serles muy utiles para los efectos que los solicitan, resultará grande beneficio á la frontera por su poblacion como deben formar para el resguardo y cuidado de sus bienes—Al cuatro dice: Que los dos aguajes referidos no se deben de contar dentro de la linea de los Precidios; por que del de Fronteras distan mas de treinta leguas y del de Santa Cruz otras tantas. Que es cuanto le ocurre declarar en el particular, que lo dice es la verdad á cargo del juramento que fecho tiene lo firmó

con migo y los de mi asistencia ordinaria conforme á derecho Dor fe—Ynocencio Buitron—Manuel Bustillos—A—Jesus Villaescusa—A—J. M. Villaescusa—rubricas—Respecto de estar evacuadas las tres declaraciones que pretende el Sor. Tesorero

General para conceder el pase de mercenacion á los
164 puestos de Naydenivacachi y Augua Prieta, devuélvase lo practicado, para que en su vista disponga lo que convenga respecto á que dichos puntos es de necesidad esten poblados sea por quien ser fueren. Yo el Alcalde 2º en turno así lo decreto, mandé y firmé con los de mi asistencia como dicho es en Arizpe a los veinte y nueve dias del mes de Agosto de mil ochocientos treinta y uno—Ynocencio Buitron—A—Jesus Villaescusa—A—J. M. Villaescusa—rubrica—Razon—Se remiten estas diligencias al Sor. Tesorero General de Estado, en cinco fojas utiles sin la caratula y para constancia lo rubriqué—rubrica—Derechos con el papel sellado

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incluso—tres pesos seis reales y á mas tres reales de la antecedente razon—rubrica—Juzgado 2º de Arizpe—Paso á manos de V. S. las diligencias practicadas sobre la averiguacion de los aguajes y sitios que denuncian los Señores Elias, para que impuesto V. S. de ellas determine lo que sea de su grado—Dichas declaraciones se tomaron con el total arreglo á lo que previene V. S. por lo dispuesto en la segunda parte del artº 23 de la ley No 30 de Mayo de 1825, y lo pongo en conocimiento de V. S. para sus ulteriores disposiciones, tomando en reconocimiento los aprecio que le tributa—Dios y Libertad, Arizpe Agosto 29 de 1831—Alc. 2º en 1º—Ynocencio Buitron—Sor. Tesorero General del Estado de Sonora—Hermosillo 10 de Octubre de 1831—Agreguese este oficio con la informacion que acompaña á la instancia original del registro de los terrenos de que se trata; y en su virtud librese la comision respectiva—Mendoza—rubrica—Hermosillo 10 de Octubre de 1831—En atencion á que de la antecedente informacion se justifica legal y suficientemente que los Ciudadanos Juan, Rafael é Ygnacio Elias Gonzales tienen una considerable abundancia de bienes semovientes que no caben en los sitios que poseen en propiedad en los puntos de San Pedro y Cienega de Heredia de la jurisdiccion del presidio de Santa Cruz, y que por esta causa les son de suma necesidad los terrenos baldios que han registrado nombrados Santa Barbara, Naydenivacachi; Agua Prieta y Coaguyona; confierese desde luego comision

bastante en forma al Ciudadano Joaquin V. Elias, vecino de
165 San Ygnacio, para que sin perjuicio de tercero que mejor derecho represente, y con previa citacion de colindantes, proceda con todos los requisitos de estilo, á la mensura de los mencionados baldios, practicando las medidas, avaluo y pregones con arreglo á lo prevenido en el Soberano decreto del Congreso Constituyente que fué del Estado Unido numero 30 de 20 de Mayo de 1825 y su respectivo reglamento, así como á lo dispuesto en el decreto numero 175 de 20 de Noviembre de 1830, y demas determinaciones y reglas vigentes de la materia Y evacuadas que sean dichas diligencias las

remitirá originales á esta Tesoreria citando a los interesados para que ocurran por si ó por opoderado, al remate que de las referidas tierras debe celebrarse en junta de almonedas de esta ciudad. El Tesorero General del Estado así lo determinó, mandó y firmó con testigos de asistencia á falta de Escribano que no le hay segun derecho—Mendoza—A—Ygnacio Escobosa—A—Mariano Romo—rubricas—Recibida la antecedente comision que por el Sor. Tesorero General se me confiere para la mensura de los terrenos que los Ciuds. Juan, Rafael, é Ygnacio Elias Gonzales, han registrado en los parages conocidos con los nombres de Santa Barbara, Naydenivacachi, Agua Prieta y Caguiyona, y mediante á la aceptacion que de ella hago, reservese por mí para cuando calmen las novedades de Indios barbaros. Y para constancia sienta esta diligencia que firmo con los de mi asistencia segun derecho—Joaquin V. Elias—A—Brigido Reyes—A—Miguel Campoy—rubricas—En la ciudad de Arizpe a los veinte dias del mes de Agosto de mil ochocientos treinta y cinco, Joaquin V. Elias comisionado por la Tesoreria General en 10 de Octubre de 1831, para la mensura de los terrenos que comprenden los parages de Santa Barbara, Naydenivacachi, Agua Prieta y Coaguiyona

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registrado por los ciudadanos Juan, Rafael é Ygnacio Elias Gonzales, en virtud de haber calmado un poco las novedades de los barbaros apaches, dispuse dirigirme á los parages mencionados con el fin de afectar mi comision, pero antes de verificarlo, se hace necesario ponerlo en conocimiento de los interesados á efecto de que por si ó por medio de apoderado se presten á presenciar las medidas de aquellos. Y para constancia hice sentar esta diligencia que firmé con los testigos de mi asistencia en la forma ordenaria segun derecho—Joaquin V. Elias—A—Brigido Reyes—A—Miguel Campoy—rubricas—En la misma ciudad, dia mes y año citado á efecto de cumplir con lo dispuesto en el auto anterior presentes los Ciuds. Juan y Rafael Elias Gonzales, los notifiqué la disposicion antes dicha, y enterados de ella contestaron. Que respecto á no poder presenciar por si las medidas de que se trata en este expediente, comicionaban en toda forma para que por su parte lo verificase el Ciudadano Fernando Luque, vecino del pueblo de Cuquiarachi á quien darian las instrucciones necesarias al efecto, esto respondieron y lo firmaron con migo y los de mi asistencia segun derecho—Joaquin V. Elias—A—Brigido Reyes—A—Miguel Campoy—rubricas—En el Presidio de Fronteras á los veinte y tres dias del mes de Septiembre de mil ochocientos treinta y cinco; el comisionado para la practica de estas diligencias dispuso pasar el correspondiente aviso al Sr. Cura Dn. Manuel Perez apoderado de su hermano Dn. Ygnacio, á efecto de que por si á por apoderado se presentase á señalar los linderos de los terrenos que comprende la Hacienda de San Bernardino correspondiente al segundo, y habiendolo verificado así lo puse por diligencia que firmé con los de mi asistencia segun derecho—Joaquin V. Elias—A—Joséá Perfecto Hoyos—A—Leonardo Luque—rubricas—Me hallo en comision de la Tesor-

eria General del Estado para proceder á la mensura de los terrenos realengos que se hallan entre los rumbos de Norte y Poniente de este Presidio, y como pueden conlindar con algunos de los que pertenecen á su heremano el Sor. Don. Ygnacio Perez de quien Vd es apoderado, lo pongo su conocimiento para que disponga quien baya á señalar los linderos de aquellos para respetarlos, en el concepto de que el dia de mañana debe dar principio á los trabajos de mi referida comision—Ofresco á Vd. todo mi aprecio y consideracion—Dios, &c.,

Fronteras Septiembre 23 de 1835—Sor. Pro. Dn. Manuel
167 Perez—Es copia Fronteras Septiembre 23 de 1835—Joaquin

V. Elias—rubrica—En el pueblo de Cuquiarachi á los veinte y cuatro dias del mes de Septiembre de Mil ochocientos treinta y cinco, habiendo recibido la contestacion que original se agrega á este expediente del Sor. Cura Dn. Manuel Perez, impuse de ella al apoderado de los Sres. Elias, Ciud^o. Fernando Luque quien me manifestó, que respecto a la distancis en que se encontraba Dn. Ygnacio Perez y en consideracion á los perjuicios que deberian resentir sus partes con mas moratoria, pedia se procediese á la medida respetandose unicamente las terrenos del Saus y Cuagullona, por estar cierto no corresponder al Sor. Perez el de la Agua Prieta, oida por mí la excepcion citada dispuse trasladarme al punto referido lo mas breve posible, sentando esta diligencia que firmé con solo dos de me asistencia, por no saberlo hacer el expresado Luque, de que doy fe segun derecho—Joaquin (stamp same as before) V. Elias—A—Jose Perfecto Hoyos—A—Leonardo Luque—rubricas—Contestando a la comunicacion de Vd 23 del corriente, que como comisionado por la Tesoreria General del Estado, para estender medidas en los sitios realengos, que conlindan con las haciendas de Sn. Bernardino y Cuchuveachi á que comprenden los sitios del Saus, Cuagullona y Agua Prieta: debo decir á Vd que desde que recibió el finado Sargento Dn. Fran^{co}. Romero el manejo de aquellas se me eximió á mi por su legitimo dueño Don Ygnacio Perez, quien suministrará a Vd lo que solicita en su citada comunicacion—Queda á disposicion de Vd mi respeto y consideracion—Dios y Libertad Fronteras 23 de Septiembre de 1835—Manuel Perez—rubrica—Sor. Comisionado Ciud^o. Joaquin V. Elias—En el puesto de la Agua Prieta a los veinte y ocho dias del mes de Septiembre de mil ochocientos treinta y cinco, yo el comisionado para la practica de estas diligencias á efecto de comenzar mis trabajos, procedi al nombramiento de oficiales medidores, contadores y apuntadores, habiendo cometido el primer encargo á los Ciudadnos Juan Ufracio de la Cruz y Juan Samaniego, el segundo a los Ciudadnos Pedro Luque y Manuel Samaniego, y el tercero á Eugenio Moreno y Julian Sillas á quienes despues de haber notificado su nombremiento lo aceptaron y

168 juraron por Dios Nuestro Señor y una señal de Cruz cumplir fiel y legalmente con su encargo. Y para constancia lo puse por diligencia que firmé con los de mi asistencia por no saber hacer ninguno de los oficiales de que certifico conforme á derecho. Doy fe—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas—En el puesto de la Agua Prieta á los veinte y ocho dias del mes de Septiembre de mil ochocientos treinta y cinco

yo el Juez comisionado para la practica de estas diligencias á efecto de comenzar la medida entregué a los oficiales nombrados un cordel de istle bien encerado y una vara de medir, é hice que á mi presencia y la de los de mi asistencia escrupulosamente midiesen y contasen cincuenta varas, lo que verificado así mandé que sus extremos pudiesen atados á dos sancos de palo; se entrego á los medidores y habiendo dicho al apoderado de los Sres. Elias, señalasen el punto que gustase para centro, lo hizo así en una laguna que esta en medio de un valle que lleva el nombre del mismo parage y la unica en toda la circunferencia; acto continuo se observó el rumbo del Sur y por el se fueron midiendo y contando escrupulosamente cincuenta y nueve cordeles que remataron en un monton de sauces que estan en medio del Valle, los cuales servirá de mojonera en interin la pone las partes de cal y canto como esta prevenido. Vuelto al centro se observo el rumbo del Norte y valle arriba se midieron cien cordeles que remataron en una lomita muy pequenita frente por el Oriente con el puesto que nombra de la Silla, habiendo hecho que alli se pudiese un monton de piedras y una cruz en señal de mojonera. Vuelto al centro se tomó el rumbo del Oriente y por el se midieron y contaron ciento sesenta y ocho cuerdas que remataron en una loma alta, que esta a la derecha del puerto que está por donde pasa al camino antiguo que vá de Santa Cruz para San Bernardino en donde madé poner un monton de piedras y una cruz en señal de mojonera. Vuelto al centro se tomó el rumbo del poniente y por el se midieron y contaron

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doscientos cuarenta cuerdas que remataron adelantito de donde descabeza la sierrita que se vé por el citado rumbo en un
 169 cerro colorado tendido que tiene una seja para la parte del Sur y frente por el mismo Poniente con lo mas alto de la sierra de San José, en donde mandé poner un monton de piedras y una cruz en señal de mojorena; y siendo ya entrada la noche dispuse suspender la medida para continuarla el dia de mañana y para constancia lo puse por diligencia que firmé con los de mi asistencia segun derecho por no saberlo hacer los demas oficiales, de que doy fé—Joaquin V. Elias—A—José Perfeto Hoyos—A—Leonardo Luque—rubricas—En el puesto de Agua Prieta á los veinte y nueve dias del mes de Septiembre de mil ochocientos treinta y cinco yo el Juez comisionado á efecto de continuar la secuela de estas diligencias me dirije con los oficiales nombrados á la mojonera del Norte, y habiendo observado el rumbo del Oriente por el se midieron y contaron ciento sesenta y ocho cordeles que remataron inmediato al puerto de la silla en una loma pequenita que esta a la derecha é inmediata a otras dos mas altas, en donde mandé poner un monton de piedras y una cruz en senal de mojonera; vuelta a la mojonera del Norte de donde partió la medida y habiendose observado el rumbo del Poniente y por el se midieron y contaron doscientos cuarenta cuerdas que remataron en un pequeño serrito que esta frente a la mojonera cruz del citado rumbo en donde hice se pudiese otra y una cruz, de aqui observando el rumbo del Sur se midieron y contaron

ochenta y nueve cordeles que remataron en la mojonera cruz del rumbo del Poniente y continuando con direccion al citado rumbo del Sur, se midieron setenta cuerdas que remataron al pie de un serro alto frente por el Sur con otro serro que tiene un crestón prieto y con el Oriente con un puerto que á la izquierda tienen dos cerros que lo forman unos crestones colorados de donde mandé poner un monton de piedras y una cruz en señal de mojonera; de este punto, habiendo observado el rumbo del Oriente por el se midieron y contaron doscientos cuarenta cuerdas que remataron en la mojonera cruz del Sur en el monton de Sauces que antes se ha expresado: de allí se graduaron ciento sesenta y ocho cordeles por el rumbo del Oriente a la falda del primer puerto que esta a la derecha del punto donde remato la mojonera cruz del mismo

170 rumbo, quedando ambos puntos linea recta de las faldas de la sierra del perrillo y de allí hacia el rumbo del Norte se graduaron cincuenta y nueve cordeles que remataron en la mojonera cruz del Oriente, quedando de este modo concluida la medida que comprende en su arca, sacada la cuenta con toda exactitud seis y medio sitios escasos, habiendo advertido á la parte, quien manifesto conformidad con lo practicado, que oportunamente inteligencia a sus partes de que hagan construir las mojoneras de cal y canto conforme esta prevenido. Ya efecto de hacerlo constar lo puse por diligencia que firmé con los de mi asistencia segun derecho, por no saberlo los demas oficiales que me acompañaron—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas. En el citado parage del Agua Prieta en el mismo dia mes y año referido. Yo el comisionado mencionado, en virtud de haberse concluido la antecedente medida, dispuse continuar la de los otros terrenos que han sido registrados, el dia de mañana y con tal fin hoy

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mismo debo emprender mi marcha á lo interior de ellos y para constancia lo firmé con los de mi asistencia, segun derecho—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas—Puesto el que suscribe en el punto que le designo apoderado de los Sres Elias, con el fin de proceder á la mensura de los terrenos de Santa Barbara y Naydenivacachi, hizo que el citado apoderado le designase el punto centrico, y habiendolo verificado cuasi en el centro de los dos parages que quedan mencionados un poco cargado al Oriente en un serro alto, se observó el rumbo del Norte y por el se midieron y contaron ciento setenta y cinco cordeles que remataron adelantito del agua de Naydeivacachi en un lomita pequeña que queda por el Norte frente por la derecha á tres serros altos y uno por el Oriete, é inmediato por el Sur con un fresnal. Vuelto al centro se observó el rumbo del Sur y por el se midieron y contaron doscientos cincuenta y ocho cordeles que remataron en la punta de una cuchilla á distancia de tres cordeles para el Oriente, en la misma linea la mojonera

171 esquina de los terrenos del Agua de Baltazar, la del Gato &c. adjudicados á Dn. Jose Rafael Elias, su hijo Don Jose Juan y su esposa D^a. Guadalupe Perez, en donde mande poner un monton

de piedras y una cruz en senal de mojonera. Vuelto al centro se observo el rumbo del Poniente y por el se midieron y contaron doscientos cordeles que remataron un poco mas arriba del parje de Santa Barbara al otro lado del arroyo en un serro blanco que está inmediato á un pacacho por la parte del Norte y por el Sur, linea recta con el serro de Magallenes en bastante distancia, en donde mandé poner un monton de piedras y un señal de cruz en senal de mojonera. Vuelto al centro se observo en rumbo del Oriente y se midieron setenta y tres cordeles que remataron al otro lado de un bajio grande en una lomita colorado que está inmediata á una cañada tascalosa y frente a la cordillera de la serrita del Naydenivacachi y a una seja blanca de la cumbre de la citada sierra, y siendo ya entrada la noche de este dia dispuse la suspencion de las medidas que estoy practicando para continuarlas el dia de mañana, respecto de su cuadratura, y para hacerlo constar lo puse por diligencia, que firmé con los de mi asistencia segun derecho, por no saberlo hacer los que me acompañan—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas—En el punto centrico de los terranos que se estan mensurando, á los treinta dias del mes de Septiembre de mil ochocientos treinta y cinco el comisionado para la practica de estas diligencias dispuso su continuacion, á efecto de dar a la medida anterior su correspondiente cuadratura, y con tal fin se dirijio á la mojonera del Norte, y estando en ella hizo que se observase el rumbo, el rumbo del Oriente y por el se fueron midiendo y contando ciento trece cordeles que remataron en un bajio grande al pie de un tascate unico que hay en la circumfrecia y frente a unos serros que tienen unos crestones colorados y en la misma linea de la medida cuadra de la mojonera esquina del Poniente del Agua Prieta en distancia de esta de treinta y seis cordeles al Sur, en donde mande poner un monton de piedras y una cruz en señal de mojonera.

Regresado a la mojonera cruz del Norte donde dio principio
172 esta medida, se observó el rumbo del Poniente y por el se midieron en una cuchilla atravesada ocotillosa, que está frente al Sur con un picacho, y para el Norte con un bajio

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tascaloso, en donde mande poner un monton de piedras y una cruz en señal de mojonera. De aquí se tiro la medida hacia al Poniente y se midieron y contaron doscientos cincuenta cordeles que remataron en la mojonera cruz de este rumbo; observando el rumbo del Sur se graduaron hasta la falda del serro de Magallanes en un serro blanco que hace la mojonera esquina del Poniente, de los terrenos de las Aguas del Gato, Baltazar Tomas Romero &c. mensurados en favor de Dn. Jose Rafael Elias, Su hijo Dn. Jose Juan y su esposa Doña Guadalupe Perez. Del punto citado se observó el rumbo del Oriente y se graduaron doscientos cordeles hasta la mojonera cruz del Sur. De aquí se continuo la medida por el mismo rumbo del Oriente y habiendose verificado de Setenta y tres cordeles, remataron en el primer parage de los compañeros en una mesa limpia and frente por el Norte con el ultimo monton de Alamos mas grande que se halla

en el valle de Santa Barbara en el arroyo de los mecos. De aqui observando el rumbo del Norte por la espereze del terreno se graduaron hasta la mojonera cruz del Oriente, doscientos cincuenta y ocho cordeles que remataron en la misma, y de esta por el mismo rumbo y por las causas tambien expresadas, se graduaron cien cordeles hasta la mojonera esquina del Sur de los terrenos del Agua Prieta: quedando asi concluida esta medida y comprendiendose en la area de esta ultima que forman los terrenos de Naydenivacachi y Santa Barbara once y medio sitios con doce y media caballerias. Todo lo que se hace constar por diligencia que firmó con los de mi asistencia segun derecho, dejando de hacerlo los demas oficiales que me acompañan, por no saber, de que doy fé.—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas—En el paraje antes citado á 1º de Octubre de mil ochocientos treinta y cinco el Juez comisionado actuante, á efecto de que se justificie el terreno todo mensurado, debia de mandar y mandé, que de los

173 oficiales que me han acompañado se nombren dos que lo verifiquen habiendo elegido con tal fin á los Ciudadanos Jose M^{te}. Luque y Julian Sillas les impuse de su nombramiento, el que despues de haber aceptado y jurado en forma de derecho cumplir fiel y legalmente con su encargo: dijeron que los seis y medio sitios que comprende la medida del Agua Prieta, los avaluaban uno en sesenta pesos por tener un corto aguaje y los otros a quince por ser absolutamente secos, cuya suma toda asciende á ciento cuarenta y dos pesos cuatro reales; que los once y medio con doce y media caballerias mas que contienen los terrenos del Naydenivacachi y Santa Barbara los justipreciaban uno en ochenta, otro en sesenta y los restantes á quince que todos hacen la suma de doscientos noventa pesos que unida a la primera ambas forman la de cuatrocientos treinta y dos pesos cuatro reales, y observando que el avaluo indicado era conforma con las leyes que sobre la materia hay vigentes, tuve á bien con el conformarme y sentar esta diligencia para constancia que firmé con los testigos de mi asistencia á falta de Escribano segun derecho, por no saberlo hacer los avaluadores nombrados, doy fé—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas—Incontinente Yo el citado Juez dispuse la suspension de las presentes diligencias para continuarlas en la capital de Arizpe a mi llegada a ella, y para constancia lo firmé ante los de mi asistencia segun

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derecho—Joaquin V. Elias—A—Jose Perfeto Hoyos—A—Leonardo Luque—rubricas—En el capital de Arizpe á los doce dias del mes de Octubre de mil ochocientos treinta y cinco yo el Juez actuante dispuse la suspension de estas diligencias por causas graves que asi me lo exigen, y para constancia senté esta diligencia con los de mi asistencia segun derecho—Joaquin V. Elias—A—Miguel Campoy—A—Brigido Reyes—rubricas—En el capital de Arizpe a los tres dias del mes de Junio de mil ochocientos treinta y seis, yo el comisionado nombrado para la practica de estas diligencias dispuse su consecucion y al efecto mañana se verificará el primer pregon con las formalidades de estilo.

Ya efecto de hacerlo constar lo pongo por diligencia que firmo con los de mi asistencia segun derecho—Joaquin V. Elias—

174 A—Miguel Campoy—A—Brigido Reyes—rubricas—1—En la ciudad de Arizpe capital del Departamento de Sonora á los cuatro dias del mes de Junio de mil ochocientos treinta y seis, yo el citado comicionado á efecto de que tenga su cumplimiento lo mandado en el auto anterior, dispuse que a son de caja y que por medio del aguacil Loreto Salcido se diese un pregon como efectivamente se dió en estos terminos Se venden por cuenta de la Hacienda publica del Departamento diez—y ocho sitios y doce y medio caballerias de tierra para cria de ganado mayor que comprenden los parajes de la Agua Prieta, Naydenivacachi y Santa Barbara, mensurados á favor de los Ciudadanos Juan, Rafael é Ygnacio Elias Gonzales; los cuales estan valuados en cantidad de cuatrocientos treinta y dos pesos cuatro reales; la persona que á ellos pueda interesarse, mejorando su avaluo, puede ocurrir ante mi como comisionada en donde le será admitida la postura que haga. Y no habiendo en el acto ocurrido nadie, lo puse por diligencia que firmé con los de mi asistencia segun derecho—Joaquin V. Elias—A—Miguel Campoy—A—Brigido Reyes—rubricas—2—En la citada capital á los cinco dias del mes y año citado se dió otro pregon y no resultando postor se puso por diligencia que firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—3—En la misma capital a los seis dias del mes y año referido se dió otro pregon y no apareciendo postor se puso por diligencia que firmé con los de mi asistencia conforme á derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—4—En la mencionada capital á los siete dias del mes y año expresado se dió otro pregon y no habiendo postor, se puso por diligencia que firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—5—En la expresada capital á los ocho dias del mes y año citado se dió otro pregon y no resultando postor, se puso por diligencia que firme con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—6—En la citada capital á los nueve dias del mes y año referido, se dió otro pregon y no apareciendo postor se puso por diligencia que firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—7—En la misma ciudad á los diez dias del mes y año mencionado se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—8—En la mencionada capital á los once dias del mes y año expresado, se dió pregon, y no resultando postor se sento por diligencia que firmé conforme á derecho con los de mi asistencia—V. Elias—A—Luis Carranco—A—Bartolo Mirando—9—En la expresado capital á los doce dias del mes y año referido se dió otro pregon y no habiendo ocurrido postor, lo firme con

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los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—10—En la misma capital á los trece dias del

mes y año dicho se dio otro pregon y no aparecienco postor lo firmé con los de mi asistencia conforme á derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—11—En la citada capital a los catorce dias del mismo mes y año, se dio otro pregon y no resultando postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—12—En la mencionada capital á los quince dias del mes y año expresado se dio otro pregon y no resultando, lo firme con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—13—En la expresada capital á los diez y seis dias del mes y año referido se dió otro pregon y no habiendo postor lo puse por diligencia que firmé con los de mi asistencia—V. Elias—A—Luis Carranco—A—Bartolo Miranda—14—En la misma capital a los diez y siete dias del mes y año referido, se dio otro pregon y no apareciendo postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—15—En la citada capital a los diez y ocho dias del mismo mes y año, se dio otro pregon y no resultando postor lo sente por diligencia que firme con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—16—En la mencionada capital a los diez y nueve dias del mes y año dicho se dió otro pregon y no habiendo postor lo puse por diligencia que firmé conforme á derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—17—En la expresada capital á los veinte dias del mes y año indicado se dio otro pregon y no apareciendo postor lo senté por diligencia que firme con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—18—En la misma capital á los veinte y un dias del referido mes y año se dio otro pregon y no resultado postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—19—En la citada capital á los veinte y dos dias del mes y año expresado se dió otro pregon y no habiendo postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—20—En la mencionada capital á los veinte tres dias del mes y año citado, se dio otro pregon y no apareciendo postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—21—En la expresada capital á los veinte y cuatro dias del mismo mes y año se dió otro pregon y no resultando postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—22—En la misma capital a los veinte cinco dias del citado mes y año, se dió otro pregon y no habiendo postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—23—En la citada capital a los veinte y seis dias del referido mes y año se dió otro pregon y no apareciendo postor lo firme con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—24—En la mencionada capital á los veinte y siete dias del citado mes y año se dió otro pregon y no resultando postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—25—En la expresada capital á los veinte y ocho dias del mismo mes y año se dió otro pregon, y no habiendo postor lo firmé con los de mi asistencia segun derecho—

V. Elias—A—Luis Carranco—A—Bartolo Miranda—26—En la misma capital á los veinte y nueve dias del citado mes y año se dió otro pregon y no resultado postor lo firmé con los de mi asistencia segun derecho—

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V. Elias—A—Luis Carranco—A—Bartolo Miranda—27—En la citada capital á treinta del mes y año referido, se dió otro pregon y no habiendo postor lo firmé con los de mi asistencia conformé a derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—28—En la mencionada capital á primero de Julio del año referido, se dió otro pregon y no habiendo postor lo firmé con los de mi asistencia conformé a derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—29—En la expresada capital a los dos dias del citado mes y año se dió otro pregon y no habiendo postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—30—En la misma ciudad a los tres dias del expresado mes y año se dió otro pregon y no habiendo postor lo firmé con los de mi asistencia segun derecho—V. Elias—A—Luis Carranco—A—Bartolo Miranda—En la mencionada capital a los cuatro dias del mes y año citado el comisionado nombrado para la practica de esta diligencias en virtud de estar concluidas dispuse su remision á la Tesoreria General y para constancia lo firmo con los de mi asistencia segun derecho—Joaquin V. Elias—A—J. Maria Valvis—A—Bartolo Miranda—Nota—En 7 del mes y año referido se remitieron estas diligencias a la Tesoreria General en fojas utiles y para constancia lo rubrique—rubrica—Arizpe 3 de Septiembre de 1836—Al promotor fiscal—Milla—rubrica—Sor Tesorero General—Esta expediente que se á pasado a mi vista como promotor fiscal de Hacienda fue mandado instruir por V. S. en virtud del escrito que presentaron á esa Tesoreria General en 21 de Julio de 1831, los Ciudad. Juan, Rafael y Ygnacio Elias Gonzales de esta vecindad, que solicitan se les adjudiquen los terrenos que se hallan baldios en los parajes nombrados Santa Barbara, Naydenivacachi, Agua Prieta Coaguyona por la parte del Norte del Presidio de Fronteras, respecto á que los sitios que ocupan nos son suficientes para mantener en ellos en numero de bienes de campo que les pertenecen—En consecuencia por decreto de 10 de Octubre de año citado, se servio V. S. librar comision bastante al

178 C. Joaquin V. Elias, vecino de San Ygnacio y hoy Secretario del Supremo Gobierno del Departamento, para que procediera con todos los requisitos de estiló á la mensura, valuo y pregonos de los referidos terrenos a favor de los mencionados Señores Elias—En tal virtud, y habiendose verificado la mensura de los expresados huecos y baldios resultaron en todos ellos diez y ocho sitios y doce y media caballerias los cuales fueron valuados justipreciados en los terminos siguientes: Los sies y medio sitios que comprende la medida del Agua Prieta, uno en sesenta pesos por tener un corto aguaje y los cinco y medio restantes a razon de quince pesos por ser absolutamente secos, y los once y medio con doce y media caballerias que contienen los terrenos de Nadenivacachi y Santa Barbara, uno

en ochenta pesos, otra en sesenta y los de mas á quince pesos cuyas sumas hacen el total de cuatro cientos treinta y dos pesos cuatro reales—El que responde dice: Que estando conformes en un todo los valuos hechos por los peritos, Que al efecto se nombraron, con lo que previene á ley organica de Hacienda No. 26 de 11 de Julio de 1834, no hay ningun inconveniente para que esa Tesoreria desponga que conjunta de almonedas se saquen al hasta publica y que se expida el correspondiente titulo de merced en favor de los interesados ó en quien mejore la postura—Este es el parecer del Promotor Fiscal de Hacienda, en cumplimiento de su encargo: V. S. no obtsaate dispondra lo mejor—Arizpe Septiembre 2 de 1836—Pedro Rodriguez—rubrica—Paso a manos de V. S. en 24 fojas utiles, el expediente instruido a consecuencia de la comision que por esa Te

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soreria tuvo a bien librar á mi favor para la mesura de los terrenos que comprenden los parages de la Agua Prieta, Naydenivacachi y Santa Barbara, registrados por D. Juan, D. Rafael y D. Ygnacio Elias, sitios hacia la parte del Norte del Presidio de Fronteras y comprensivo de diez y ocho sitios y dose y media caballerias de tierra cria de ganado mayor, valuados en cantidad de cuatrocientos treinta dos pesos cuatro reales; a fin de que V. S. se sirva hacer de
179 dicho documento el uso que fuere de su agrado—Esta ocasion me proporciona el gusto de repetirle las protestas de mi distinguido aprecio—Dios y Libertad Arizpe Julio 14 de 1836—Joaquin V. Elias—Sor. Tesorero General del Departamento—Arizpe 15 de Septiembre de 1836—Como pide el promotor fiscal en su antecedente repuesta: procedase a la celebracion de las tres publicas almonedas de estilo, para el remate de las tierras de que trata este expediente, citandose para ello á los vocales que componen la Junta á fin de que concurren á esta Tesoreria—Milla—rubrica—1^a—Almoneda—En la Capital de Arizpe a los quince dias del mes de Septiembre de mil ochocientos treinta y seis: convocados en Junta de Almonedas en el oficio de está Tesoreria General del Departamento, los Sres. Presidente y vocales que la componen, Ciud^a. Tesorero Jose Justo Milla, Juez de la Inst^a por ministerio de lay ley de este partido Julian Padilla y promotor fiscal Pedro Rodriguez Guzman, dispusieron que á son de caja se dice al publico un pregon, como efectivamente lo dió en altas y claras voces el pregonero Loreto Salcido, diciendo “ Van á rematar por cuenta de la hacienda publica del Departamento diez y ocho sitios y doce y media caballerias de tierra para cria de ganado mayor y caballada, comprendidos en los parages nombrados la Agua Prieta, Naydenivacachi Y santa Barbara, sitios en jurisdiccion del Presidio de Fronteras en el Partido de esta capital, medidos á solicitud de los Ciudadanos Juan, Rafael é Ygnacio Elias Gonzales de esta vecindad, y valuados en cantidad de cuatrocientos treinta y dos pesos cuatro reales, en los terminos siguientes: los seis y medio sitios que comprende la medida de la Agua Prieta, uno en sesenta pesos por tener un corto aguaje, y los cinco y medio restantes á razon de quince pesos, por ser absolutamente secos y los once y medio con dos y media

caballerías que contienen los otros dos puntos, uno en ochenta pesos, otro en sesenta pesos y los demás á quince pesos, cuyas sumas hacen el referido, valor total de cuatrocientos treinta y dos pesos cuatro reales. Quien quisiere hacer postura al expresado terreno ocurra á formalizarla ante esta Junta, en donde le será admitida la que hiciere: en concepto de que pasado mañana

que dará celebrado el remate en el mejor postor" y no ha-
 180 biendo ocurrido ninguno se cerró esta diligencia que para la debida constancia firmaron los Sres. Presidente y vocales de esta Junta.—Milla—Padilla—Rodriguez—rubricas—2^a Almoneda—En la misma capital á los diez y seis dias del citado mes y año, estando reunida esta Junta de Almonedas, se dió otro pregon igual en todo al que antecede; anunciandose al publico que á las doce del dia de mañana deberá quedar indefectiblemente celebrado el remate de los diez y ocho sitios y doce y media caballerías de que se trata en este expediente á favor del mejor postor que resultare. Y no habiendo comparecido ninguno, se cerró esta diligencia, que para la debida constancia firmaron los Sres. presidente y vocales de esta Junta—Milla—Padilla—Rodriguez—rubricas—3^a Almoneda—En la capital de Arispe á los diez y siete dias del mes de Septiembre de mil

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ochocientos treinta y seis; convocadas en junta de almonedas, en el oficio de esta Tesoreria General del Departamento, los Sres. Presidente y vocales que la componen C. C. Tesorero José Justo Milla, Juez de 1^a Inst^a por ministerio de la ley de este partido Julian Padilla y promotor fiscal Pedro Rodriguez Guzman se procedio a la practica de la tercera y ultima almoneda para el remate de los diez y ocho sitios doce y media caballerías de tierras comprendidas en los puntos conocidos con los nombres de la Agua Prieta, Naydenivacachi y Santa Barbara dandose un pregon en los mismos terminos y con las proprias solemnidades que los dos antecedentes, anunciandose al publico por tres veces que ahora mismo debia quedar celebrado el remate. En cuyo acto se presento el Ciud^a Rafael Elias ofreciendo por si y á nombre de sus comparcioneros y hermanos Ciud^a Juan é Ygnacio Elias Gonzales los expresados cuatrocientos treinta y dos pesos cuatro reales en que fueron justipreciados dichas tierras: y siendo ya dada la plegaria de este dia sin que compareciese ningun otro mejor postor dijo por ultimo el pregonero en altas y claras voces "á la una, á las dos, á las tres, que se remate, que se remate, que se remate, que buena, que buena, que buena pero les haga á los referidos Rafael, Juan é Ygnacio Elias Gonzales" En tales termi-

181 nos se concluyó este acto quedando publica y solemnemente rematados á favor de estos interesados los nominados diez y ocho sitios doce y media caballerías de tierras que comprenden los citados puntos de la Agua Prieta, Naydenivacachi y Santa Barbara sitios jurisdiccion del Presidio de Fronteras por la expresada cantidad de cuatrocientos treinta y dos pesos cuatro reales en que fueron justipreciados dichas tierras. Y para la conveniente constancia se firmó esta diligencia que firmaron los Sres. Presidente y vocales de

esta Junta de Almonedas con el referido D^a Rafael Elias—Milla—Padilla—Rodriguez—Rafael Elias—rubricas—Arizpe 17 de Septiembre de 1836—Hallandose concluido el remate de los diez y ocho sitios, doce y media caballerias de tierras para cria de ganado mayor y caballada que comprenden los parages nombrados la Agua Prieta, Naydenivacachi y Santa Barbara, sitos en jurisdiccion de Presidio de Fronteras á favor de los Ciudadanos Juan, Rafael Ygnacio Elias Gonzales, como consta de las antecedentes diligencias de almonedas, notificase y hagase saber al interesado para que por si y á nombre de sus otros dos comparcioneros y hermanos proceda á entrar en esta Tesoreria los expresados cuatrocientos treinta y dos pesos suatro reales en que fue rematado el referido terreno agregandose á este expediente la certificacion que acredite dicho entero en la forma aconstumbrada, y verificado que sea, expidase á los interesados el titulo de merced con que deben resguadar sus mencionadas tierras, conformé á la ley. El Tesorero General del Departamento de Sonora, así lo proveyo, mandó y firmó con testigos de asistencia á falta de Escribano que no le hay segun derecho—Jose Justó Milla—A—Bartolo Miranda—A—Santos Vigarria—rubricas—En el mismo dia, mes y año, siendo presente el C. Rafael Elias, se le notificó é hizo saber el auto que antecede y enterado, dijo: que lo oye y que desde luego está pronto á verificar el entero de los treinta pesos del importe del titulo como se previene. Esto respondió y lo firmó con el Señor Tesorero General y testigos de asistencia—Jose Justo Milla—Rafael Elias—A—Bartolo Miranda—A—Santos Vigarria—rubricas—En

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28 de Diciembre de 1836 se expidió titulo de merced de las tierras de que trata este expediente: y queda tomada razon de el á fojas 41 vuelta del correspondiente libro—rubrica.

Es testimonio fiel y legalmente sacado del titulo original que existe en el archivo de esta Tesoreria General; está corregido y co-tejado en estas diez y seis fojas de papel cubiertas con las estampillas correspondiente, añadiendo que todas las fojas del original estan en papel sellado correspondiente; todo lo que autorizo y firmo en la ciudad de Hermosillo, capital del Estado de Sonora, Republica de Mexico á primero del mes de Marzo de mil ochocientos noventa y cinco años.

V. AGUILAR.

(Stamp same as before.)

Victor Aguilar, Tesorero General del Estado de Sonora, Republica de Mexico.

Certifico: que en el libro de toma de razon de los titulos de terrenos existente en este achivo, á la foja 41 vuelta de haya una del tenor siguiente:

“ En 28 de Diciembre de 1836 se expidió titulo de merced de diez y ocho sitios dose y media caballerias, que comprenden los puntos nombrados Naydenivacachi, Agua Prieta y Santa Barbara en juris-

dición del Presidio de Fronteras, á favor de los Ciudad^{es} Juan, Rafael é Ygnacio Elias Gonzales de esta vecindad." Mendoza—rubrica.

Y para que consta doy la presente en la ciudad de Hermosillo capital del Estado de Sonora, á primero de Marzo de mil ochocientos noventa y cinco.

V. AGUILAR.

183 Rafael Izabal Vice Gobeador constitucional del Estado de Sonora en ejercicio del poder ejecutivo, Certifico que el C. Victor Aguilar es como se titula, Tesorero General en el Estado y suya la firma que antecede.

Hermosillo Marzo 2 de 1895.

RAFAEL YZABAL.

RAMON CORRAL.

Republica Mexicana. 1894—1894. Timbre. Diez centavos, Mexico. Gobierno del Estado libre y Soberano de Sonora.

(Stamp same as before.)

Tesoreria General del Estado de Sonora. Carta de pago num. 258.

Certifico que el Señor Bartolomé Rocuín enteró en esta oficina la suma de \$5.20 incluso el 30% federal per legalizacion que hace el Gobeador del Estado de la firma del Señor Tesoreroa General del mismo.

Hermosillo Marzo 2 de 1895.

por el Tesorero General, JUAN GARCIA.

Del Estado	\$4.00
30% Fed	1.20
	<hr/>
	\$5.20

(Endorsed :) No. 5 F. No. 20. In the court of private land claims. Santiago Ainsa, trustee and adm'r, etc., vs. The United States. Agua Prieta grant. Certified copy from treasurer general of the State of Sonora of original matrix and record in Toma de Razon. Filed March 16, 1895. James H. Reeder, cl'rk, by R. L. Long, dep. S. M. Franklin, Rochester Ford, att'ys for plaintiff. Plaintiff's Ex. "B." Reporter.

(Endorsed :) (Case No. 5, F. 20.) Certified copy from treasurer general of the State of Sonora of original matrix and record in Toma de Razon. Filed in the office of the clerk, court of private land claims, March 16, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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PLAINTIFF'S EXHIBIT "C."

Year 1895.

Authorized testimonio of the title to Agua Prieta, Naydenivacachi, and Santa Barbara.

A seal which says, Free State of the West. Second seal. Two reals. For the years 1831 and 1832.

Honorable treasurer general of the State:

The citizens Juan, Rafael and Ygnacio Elias Gonzalez, before you appear by the present petition saying that in the lands of San Pedro and Cienega de Heredias belonging to them, in the jurisdiction of the presidio Santa Cruz, they have cattle and sheep herds whose numbers they cannot possibly feed in the sitios belonging to them, as is a notorious and public fact. For this reason their cattle wander away to the four cardinal points of the compass, but more particularly towards the waters of the Santa Barbara, Naydenivacachi, Agua Prieta and Coaguyona, by which they suffer incalculable damages, because as they are public lands everybody who wishes enters freely into them, run- and act- as he pleases without our consent or permit, from which follow insults, robberies and the scattering of the cattle more and more.

To prevent such damages and evils, and that the lands of our stock country may be sufficient for the quantity of the cattle we now have, and which must increase approximately in spite of the continuous damages caused by the Indians, war enemies, we are obliged to make the legal petition, as we do, for the lands that may be found to be public places within the places and springs aforesaid, which are bounded on the north by the Chrichahua mountains, on the south by the lands of the Sinaloas, on the east by the mountains of Coaguyona, and on the west by the lands of Ians. Wherefore we ask and pray you that in conformity to the law of May 20 of 1825, and the power conceded to you by article 22, to accept our petition for the said lands, and to issue the proper decree for the measurement, valuation, posting and sale, and that other proper proceedings may be executed up to the issuing of the patent title, offering to pay the dues, costs and all necessities, &c.

Arispe, July 21 of 1821.

JUAN ELIAS GONZALES.
RAFAEL ELIAS.
YGNACIO ELIAS.

Hermosillio, Aug-st 12, 1831.—Presented and admitted according to law, and it is ordered that the commission be appointed for the survey which these parties solicit to be made of the public lands of Santa Barbara, Naydenidacachi, Auga Prieta and Coaguyonia, after the necessary judicial proceedings and steps have first been taken by this treasury in accordance with the law in the premises. The treasurer general of the State, Josec Maria Mendoza, so decreed,

ordered and signed with the usual witnesses in the absence of a notary.

MENDOZA.

Witness:

MARIANO ROMO.

Witness:

BARTOLO MIRANDA. [RUBRICAS.]

Year 1831.

THE STATE OF THE WEST:

Judicial proceedings continued with regard to the matter whether the places Naydenivacachi and Agua Prieta, situated at the boundary line of the Apaches, shall be granted in favor of the Messrs. Elias.

OFFICE OF THE TREASURY GENERAL OF THE
STATE OF SONORA.

The citizens Juan, Rafael and Ygnacio Elias Gonzales, owners of the lands of the San Pedro and Cienega de Heredia, situate 186 in the jurisdiction of the presidio Santa Cruz, have directed to this office of the treasury general the communication which I here copy word for word:

“Honorable treasurer general of the State:

The citizens Juan, Rafael and Ygnacio Elias Gonzales before you appear by the present petition saying that in the lands of San Pedro and Cienega de Heridias belong to them, in the jurisdiction of the presidio Santa Cruz, they have cattle and sheep herds whose numbers they cannot possibly feed in the sitios belonging to them, as is a notorious and public fact. For this reason their cattle wander away to the four cardinal points of the compass, but more particularly towards the waters of the Santa Barbara, Naydenivacachi, Auga Prieta and Coaguyona, by which they suffer incalculable damages, because as they are public lands everybody who wishes enters freely into them, run and act as he pleases without our consent or permit, from which follow insults robberies and the scattering of the cattle more and more.

To prevent such damages and evils, and that the lands of our stock country may be sufficient for the quantity of cattle we now have and which must increase approximately in spite of the continuous damages caused by the Indians, war enemies, we are obliged to make the legal petition as we do, for the lands that may be found to be public lands within the places and springs aforesaid, which are bounded on the north by the Chrichua mountains, on the south by the lands of the Sinaloas, on the east by the mountains of Coaguiyona and on the west by the lands of Ians. Wherefore we ask and pray you that in conformity to the law of May 20 of 187 1825 and the power conceded to you by article 22, to accept our petition for the lands and to issue the proper decree for

the measurement, valuation, posting and sale, and that other proper proceedings may be executed up to the issuing of the patent title, offering to pay the dues, costs and all necessities &c.

Arispe, July 21 of 1831.

JUAN ELIAS GONZALES.
RAFAEL ELIAS.
YGNACIO ELIAS."

And I communicate it to you in order that with knowledge thereof and in accordance with the provisions made in the second part of article twenty-three of the law No. 30 of May 20, 1825, you cause a judicial hearing of three witnesses of practical knowledge, who are to be impartial and in every way competent, who shall testify as to the following points:

1. If the interested parties making the foregoing petition have the large number of cattle and sheep which they claim to possess.

2. If in order to support said cattle and sheep the sitios which they own at San Pedro and Cienega de Heridia are positively insufficient.

3. If in consequence thereof they have need of all or part of the unappropriated public lands and watering places which they denounce at Santa Barbara, Naydenivacachi, Agua Prieta and Coaguyona, bordering on the north upon the mountains of Chiricachua, on the south upon the lands of the Sinalcas, on the east upon the mountains of Coaguyona, and on the west upon the lands of Ins, as stated by the interested parties.

4. If any of the said public lands are outside of the boundaries of the border presidios, stating which, if any, they are, and stating the fact if none are so situated. In case that the declaration
188 which you receive upon the aforesaid points should not be as precise as it is desirable it should be, and as this office wishes it to be, you may ask the police judges of Santa Cruz and Tubac for further information in the matter, and as soon as all these proceedings have been held, you will transmit them to me at your convenience, stating what facts you know in the matter, so that everything may be done in this office in accordance with the law provided in the premises. God and liberty.

Hermosillo, August 12, 1831.

The second alcalde of the city of Arispe.

JOSE MARIA MENDOZA. [RUBRICA.]

Arispe, August 26, 1831.—The foregoing communication dated on the 12th inst., from the treasurer general of the State, having been received and its contents noted, I shall proceed to the interrogatory embracing the four questions mentioned by you, taking the deposition of three impartial witnesses who have practical knowledge in the matter of the denouncement of lands made by the citizens Juan, Rafael and Ygnacio Elias Gonzales; and if the depositions of these three witnesses should not be satisfactory for compliance with the wishes of the treasurer general, I shall apply to the police judges of Fronteras and Cuquiavachi, to whose jurisdiction the denounced

lands belong, in order that they may give such information as is deemed necessary in the premises.

I, the citizen Ynocencio Buitron, second alcalde of this city, so provided, ordered and signed with my usual witness- according to law.

YNOCENCIO BUITRON.

Witness:

JESUS BILLAESCUSA.

Witness:

J. MARIA VILLAESCUSA. [RUBRICAS.]

189 Thereupon I ordered to appear before me the citizen Luis

Yberri, a resident of this city, well and favorably known for his truthfulness, and I administered the oath to him, which oath he took by God our Lord and the sign of the cross in due form, by virtue of which he promised to answer all questions addressed to him truthfully; and being interrogated upon the four points comprising the interrogatories of the treasurer general of the State in his aforesaid order, as to the first he answered that he knows for a fact that they have a great quantity of cattle of both kinds, and more of the kind called stock cattle. With reference to the second point he says that the number of said stock is so large that they enter upon the lands which the interested parties denounce, because the sitios of San Pedro and Cienega de Heredian are not sufficient to nourish them; to the third, that because the said cattle of the petitioners are scattered over the lands which they register, and even beyond them in his opinion it is a matter of necessity for them to be the owners of the said lands of Santa Barbara; to the fourth he answers that they are all outside of the "egidos" (common lands) of any presidio, because the nearest, which is that of Calhiguona, is distant from that of Fronteras seven leagues to the north. That this is all he knows and can say about the matter by virtue of the oath he has taken, and he signed with me and the usual witnesses.

YNOCENCIO BUITRON.

LOUIS YBERRI.

Witness:

ANTO. APALATEGUI.

Witness:

JESUS VILLAESCUSA. [RUBRICAS.]

190 Immediately thereupon, there being present the citizen lieutenant commanding the company of infantry of Bavispe, Teodoro L. de Aros, I administered the oath to him, taking his word of honor and he promised to answer truthfully all questions that might be asked him; and being interrogated as to the questions formulated by the treasurer general, as to the first he answered that they have large quantities of stock cattle as well as sheep; to the second he answered that the lands of San Pedro and Cienega de Herida are insufficient and not of a suitable kind for the considerable quantity of cattle, and that for this reason they have scattered

in several directions; to the third he answers that in his opinion it is necessary to adjudicate to them the lands denounced, partly because by their being occupied the frontier becomes protected, and partly because the cattle of the Messrs. Elias are upon the lands solicited; to the fourth he answers that the nearest point to a presidio line is that of Cahuiyona, and that the distance from there to Fronteras is about seven or eight leagues, for which reason it is outside of the legal property designated in the regulations concerning presidios, and in the decree lately issued by the honorable Congress of the United States. Being asked no other questions, and having given satisfactory answers to those made by the treasurer general, he signed this deposition with me and my usual witnesses, with whom I act according to law, to all of which I hereby certify.

YNOCENCIO BUITRÓN.
TEODORO L. DE AROS.

Witness:

ANTONIO APALATEGUI.

Witness:

JESUS VILLAESCUSA. [RUBRICAS.]

Thereupon I ordered to appear before me in my court the citizen Manuel Bustillo, a resident of this city, having the necessary
191 qualifications for giving testimony in the matter ordered by the treasurer general, and I administered the oath to him, which he took by God our Lord, and the sign of the cross, by virtue of which oath he promised to answer truthfully all questions that might be asked him; and being interrogated as to the questions given by the said treasurer general, he answered with regard to the first that it is a fact that there is no room to maintain the cattle owned by the three Messrs. Elias upon the lands of San Pedro and Cienega de Heredia, which have been granted to them, and that there is no other way open to them to keep their animals except to establish them upon the water-courses of Naydenivacachi and Agua Prieta, which places are at the present time unoccupied; that it is quite suitable to grant them to the first comer as they are situated upon the frontier of the enemy; that therefore deponent is of opinion that it is very just to adjudicate the said lands to the persons denouncing them, on condition that they will stock them; to the second he says that he has already stated the sitios owned by them to be insufficient for the maintenance of their stock, and that therefore they need the sitios which they solicit; to the third he says that in granting to the interested parties the places which are without owners in the aforesaid localities, not only will they make good use of them, as they state, but it will also have good results for the frontier to have said lands occupied, as will have to be the case for the better care and protection of their property; to the fourth
192 he says that the mentioned two aguajas (claims) cannot be considered as being within the property line of any presidios, because from that of Fronteras they are distant more than thirty leagues, and from that of Santa Cruz an equal distance; that this is all he can declare in the matter; that what he has stated is

the truth under the oath he has taken, and he signed this with me and my usual witnesses according to law, to all of which I certify.

YNOCENCIO BUITRON.
MANUEL BUSTILLOS.

Witness:

JESUS VILLAESCUSA.

Witness:

J. M. VILLAESCUSA. [RUBRICAS.]

The three declarations being now made which the treasurer general demands in order to proceed with the issuing of the grant to the places Naydenivacachi and Agua Prieta, the proceedings taken so far are returned to him, in order that he may issue the necessary orders for the occupation of the said places by whomsoever they are to be stocked. I, the second judge, so decreed, ordered and signed with my usual witnesses at Arispe, on the 29th day of August, 1831.

YNOCENCIO BUITRON.

Witness:

JESUS VILLAESCUSA.

Witness:

J. MA. VILLAESCUSA. [RUBRICAS.]

Record.—These proceedings are transmitted to the treasurer general of the State on five legal sheets, without counting the cover, in witness whereof I so noted it.

[RUBRIC.]

Fees together with the stamped paper, three dollars six reals and, in addition, three reals for the foregoing record.

[RUBRIC.]

Second court of Arispe.—I hereby transmit to you the proceedings held in the matter of the testimony concerning the water-courses and sitios denounced by the Messrs. Elias, in order that you may note their contents and order what is further to be done in the premises. Said declarations were taken in exact obedience to your order relative to the provisions contained in the second part of article 23 of the law No. 30 of May 20, 1825, all of which I report awaiting your further dispositions in the matter. Very respectfully, etc. God and liberty.

Arispe, August 29, 1831.

Second alcalde to the treasurer general of the State of Sonora.

YNOCENCIO BUITRON.

Hermosillo, October 10, 1831.—I beg to transmit herewith the judicial proceedings which accompany the original document of the registry of the lands referred to, in order that the respective mandate may be issued.

MENDOZA. [RUBRICA.]

Hermosillo, 10 of October, 1831.—Inasmuch as the foregoing information legally and sufficiently proves that the citizens Juan, Rafael and Ygnacio Elias Gonzales have a great abundance of cattle

which overcorwd the sitios they own at the place of San Pedro and Cienega de Heredias in the jurisdiction of the presidio of Santa Cruz, and that for this reason they need very much the public lands which they ask for named Santa Barbara, Naydenivacachi, Auga Prieta and Coaguyona, full commission if forthwith given in due form to the citizen Joaquin Vicente Elias, resident of San Ygnacio, so that without damage to third parties who may have better right, having first summoned adjacent owners, he may proceed to take the legal steps to survey the said public lands, effecting the measurement, appraisement and posting as is provided in the sovereign decree of the constituent Congress of the United States, that was,

194 No. 30 of May 30, 1825, and its proper resolutions, and also as it is provided in the decree No. 175 of November 20, 1830, and other determinations and regulations extant on the subject, and said proceedings having been executed, he should send the originals to this treasury, summoning the interested parties to appear in person or by attorney at the auction of the said lands which must take place in an auction sale in this city. The treasurer general of the State so ordered it and signed it with assistant witnesses in default of a secretary, according to law.

MENDOZA.

Assistant :

YGNACIO ESCOBOSA.

Assistant :

MARIANO ROMO. [RUBRICAS.]

The foregoing commission conferred on me by the honorable treasurer general for the survey of the lands petitioned for by the citizens Juan, Rafael and Ygnacio Elias Gonzales, for the places called Santa Barbara, Naydenivacachi, Auga Prieta and Coaguyona, is received, and while I accept it, let it be postponed till the inroads of the Indians, barbarians, become less frequent.

In witness whereof I note it and sign it with my assistants according to law.

JOAQUIN DE ELIAS.

Assistant :

BRIGIDO REYES.

Assistant :

MIGUEL CAMPOY. [RUBRICAS.]

In the city of Arispe, on the 20th day of August, 1835, I, Joaquin de Elias, commissioned by the treasurer general on the 10th of October, 1831, to execute the survey of the land- which comprise the places Santa Barbara, Naydenivacachi, Auga Prieta and Coaguyona, registered by the citizens Juan, Rafael and Ygnacio Elias Gonzales, inasmuch as the atrocities of the barbarous Apaches have
195 abated somewhat, undertook to go to the aforesaid places, in order to execute my commission : but before commencing proceedings it is necessary to notify the interested parties of it, in

order that they may be present either in person or by attorney and witness the measuring of said lands. I therefore made this report, which I signed with the usual witnesses in the ordinary form according to law.

JOAQUIN DE ELIAS.

Witness :

BRIGIDO REYES.

Witness :

MIGUEL CAMPOY. [RUBRICAS.]

At the same city, in the same month and year, in order to put into effect the matters mentioned in the foregoing document, there being present the citizens Juan and Rafael Elias Gonzales, I notified them of the foregoing proceeding, and having heard if they answered that by reason of their not being able to witness personally the measurements spoken of in this expediente they appointed in due form the citizen Fernando Lueke, a resident of the town of Cuqui-arachi, to whom they would give the necessary instructions in the premises, for the purpose of witnessing said measurement in their place and stead. This they answered and signed with me and the usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness :

BRIGIDO REYES.

Witness :

MIGUEL CAMPOY. [RUBRICAS.]

At the presidio of Fronteras on the twenty-third day of the month of September, 1835, the commissioner appointed for the execution of these proceedings ordered that due notice be given to the parish priest, Don Manuel Perez, attorney for his brother Don Ygnacio, that he should either in person or through an agent appear
196 to point out the boundary lines of the lands which comprise the hacienda (property) of San Bernardino, appertaining to the latter, and this having been done I made a record of it, which I signed with the usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness :

JOSE PERFETO HOYOS.

Witness :

LEONARDO LUKUE. [RUBRICAS.]

I am acting under an appointment from the office of the treasurer general of the State to proceed with the measurement of the public lands situate between the north and west lines of this presidio, and as they may border upon some that belong to your brother, Don Ygnacio Perez, whose duly appointed agent you are, I give you notice thereof that you may appoint some one to go and point out the boundary lines of the former so that they may not be trespassed

upon. With the understanding that tomorrow I must begin the duties imposed upon me by said appointment.

Very respectfully. May God keep you, etc.

Fronteras, September 23, 1835.

To Don Manuel Perez.

A true copy.

Fronteras, September 23, 1835.

JOAQUIN DE ELIAS. [RUBRICA.]

In the town of Cuquiarachi, on the 24th day of the month of September, 1835, having received the answer the original of which is attached to this expediente from the parish priest, Don Manuel Perez, I communicated it to the appointed agent of the Messrs. Elias, the citizen Fernando Luque, who observed to me that in view of the distance at which Don Ygnacio was and in consideration of the hardships which the parties whom he represented might suffer by any further delay, he would ask that the survey be proceeded
197 with, only taking care not to trespass upon the lands named Saus and Cuagullona, as he was certain that the land called Auga Prieta does not belong to Mr. Perez. Having heard this statement, I went to the said place with the least possible delay, making a record of these proceedings, which I signed with the usual witnesses only, on account of the said Luque not knowing how to write, to all of which I certify according to law.

Witness:

JOSE PERFECTO HOYES.

Witness:

LEONARDO LUQUE. [RUBRICAS.]

In answer to your communication, dated 23rd inst., made by virtue of your appointment as commissioner by the treasurer general of the State for the purpose of executing the measurements of the sitios of public lands which border on the property of San Bernardino and Cuchuverachi, and which comprise the sitios of Saus, Quagullona and Auga Prieta, I have to say that since Sergeant Don Francisco Romero (deceased) was placed in charge of the former, I was released from said charge by their lawful owner, Don Ygnacio Perez, who will answer the questions made in your above-mentioned communication.

Yours, etc. God and liberty.

Fronteras, September 23, 1835.

To the commissioner Joaquin de Elias.

MANUEL PEREZ. [RUBRICA.]

At the place Auga Prieta, on the 28th day of the month of September, 1835, I, the commissioner appointed for the execution of these proceedings, in order to begin the fulfillment of my duties, proceeded to the appointment of the measuring, counting and recording officers, appointing as measurers the citizens Juan Ufracio
198 de la Cruz and Juan Samaniego, as counters the citizens Pedro Luque and Manuel Samaniego, and as notors Eugenio

Moreno and Julian Sillas, all of whom I notified of their appointment, which they accepted, and they made oath by God our Lord and the sign of the cross that they would truly and faithfully fulfill their duties.

In witness whereof I made this record, which I signed with my usual witnesses, as neither of the appointed officers knew how to sign, to all of which I certify according to law.

JOAQUIN DE ELIAS.

Witness :

JOSE PERFECTO HOYOS.

Witness :

LEONARDO LUQUE. [RUBRICAS.]

At the place of Auga Prieta, on the 28th day of September, 1835, I, the judge commissioner to carry out these proceedings, so as to begin the survey, delivered to the appointed officials a regulation cord, well waxed, and a vara measure, and I caused in my presence and in that of my assistants that they should carefully measure fifty varas, which they did. I ordered the extremes to be tied to two poles, which were to be delivered to the chainmen; and having asked of the attorneys of Messrs. Elias to point out the place they wanted as the centre, he did so, fixing a lagoon or pool that is in the middle of a valley called by the same name as the place, and the centre of all the circumference. Forthwith the southern direction was taken, and towards it were measured and carefully counted fifty-nine cords, which ended at a clump of willow trees which are situated in the middle of the valley, which shall serve as a monument until the parties erect one of masonry as is provided by law. Returning

to the centre, the direction of the north was taken, and going up

199 the valley there were measured one hundred cords, which ended on a very small hill, fronting towards the east with the

pass called "La Silla," having ordered a heap of stone to be placed there, and a cross as a monument. Returning to the centre, the direction of the east was taken, and towards it were measured and counted one hundred and sixty-eight cords, which ended on a high hill which is found on the right of the pass through which passes the old road from Santa Cruz to San Bernardino, where I ordered placed a heap of stones and a cross as a monument. Returning to the centre, the direction of the west was taken, and towards it were measured and counted two hundred and forty cords, which ended a little where the little mountains seen in the said direction subside (or end), on a long sloping red hill that has a ledge towards the south, and fronting in the same direction with the highest point of the San Jose mountains, where I ordered placed a heap of stones and a cross as a monument, and it being night I suspended the survey, to continue it tomorrow, and in witness whereof I noted it in the proceedings which I signed with my assistants according to law, as the other officials do not know how to write, which I attest.

JOAQUIN DE ELIAS.

Assistant :

JOSE PERFECTO HOYOS.

Assistant :

LEONARDO LUQUE. [RUBRICAS.]

At the place of Auga Prieta on the 29th of September, 1835, I, the judge commissioner, in order to continue these proceedings went with the appointed officers to the northern monument, and having taken the direction of the east, there were measured and counted
 200 toward it one hundred and sixty-eight cords, which ended near the Silla pass on the small hill that is to the right and near two larger ones, where I ordered placed a heap of stones and a cross as a monument. Returning to the northern monument, from where we had begun the measurement, and the direction of the west having been taken, there were measured and counted towards it two hundred and forty cords, which ended on a small hill which is in front of the cross monument, in said direction, here another monument was placed and a cross; from here, taking the direction of the south, there were measured and counted towards it eighty-nine cords, which ended on the cross monument of the west, and continuing in the said southern direction there were measured sixty cords, which ended at the foot of a high hill, fronting towards the south with another hill that has a black crest and towards the east with a pass which has to the left two hills formed by some red ledges, where I ordered placed a heap of stones and a cross as a monument; from this place, taking the eastern direction, there were measured and counted two hundred and forty cords, which ended at the cross monument of the south, in the clump of willow trees spoken of before. From thence there were calculated one hundred and seventy-eight cords towards the east, to the slopes of the first pass which is to the right of the point where ended the cross monument of the same direction, both points lying in a straight line along the foot of the Perrillo mountains; and from thence in the direction of the north there were calculated fifty-nine cords, which ended at the cross-monument of the east. The survey being thus concluded, the calculation carefully made resulted in six short sitios. The
 201 interested party having been informed thereof, he was satisfied with the proceedings and he opportunely notified his principals to have monuments constructed of mortar and stone as is provided, and I put it in this proceeding which I sign with my assistants according to law, as the other officials accompanying me do not know how to write.

JOAQUIN DE ELIAS.

Assistant:

JOSE PERFETO FLOYOS.

Assistant:

LEONARDO LUQUE. [RUBRICAS.]

At the said place of Auga Prieta, on the said day, month and year, I, the aforesaid commissioner, having now concluded the foregoing measurement, ordered the continuation of the measurement of the other two lands that had been registered, to take place tomorrow, and towards this end I must begin my journey to the central part

of said lands. In witness whereof I signed with my usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness :

JOSE PERFETO FLOYOS.

Witness :

LEONARDO LUQUE. [RUBRICAS.]

The subscriber taking his stand on the place pointed out by the attorney of Messrs. Elias, in order to proceed to the survey of the lands of Santa Barbara and Naydenivacachi, the said attorney having been requested to designate the centre point, and having done so on the centre between the two places named, a little way nearer to the east on a hill, the direction of the north was taken, and towards it were measured and counted one hundred and sixty-five cords which ended a little beyond the spring of Naydenivacachi on a little hill fronting towards the north, with three high hills and one towards the east and bearing towards the south, fronting an ash forest. Returning to the centre, the direction of the south was taken and towards it were measured and counted two hundred and fifty-eight cords, which ended at the end of a mountain spur at the distance of three cords towards the east, on the same line with the corner monument of the lands of the spring of Baltazar, the gato &c., granted to Mr. Jose Rafael Elias, the son, Mr. Jose Juan, and his wife, Mrs. Guadalupe Perez, where I ordered placed a heap of stones and a cross as a monument. Returning to the centre the direction of the west was taken, and towards it were measured and counted two hundred cords, which ended a little higher up beyond the place called Santa Barbara, on the other side of the creek, on a white mountain that is near a mountain peak towards the north, and towards the south in a straight line with the Mogollones mountains, a good distance off, where I ordered placed a heap of stones and the mark of a cross as a monument. Returning to the centre, the direction of the east was taken and there were measured sixty-three cords, which ended on the other side of a large low valley on a little hill that is near to a rocky gulch and fronting the mountains of Naydenivacachi, and to a white ledge on the top of said mountains; and night having already settled in for this day, I ordered the suspension of the survey which I am making, to continue it tomorrow as to squaring it. In witness whereof I make note of it, which I sign with my assistants according to law, as those in my company do not know how.

JOAQUIN DE ELIAS.

Assistant :

JOSE PERFECTO FLOYOS.

Assistant :

LEONARDO LUQUE. [RUBRICAS.]

At the centre point of the lands now being surveyed, on the thirtieth day of the month of September, 1835, the commissioner appointed to make this survey ordered the continuation of

it, in order to square the former measurement, and to that end he proceeded to the northern monument, and being located on it, he ordered the direction of the east to be taken, and thereon were measured and counted fifty-three cords, which ended in a low valley at the foot of a "jazcate" the only one in all that locality, and fronting some mountains having some red ledges, and on the same line with the squaring measurement of the corner monument of the west of Auga Prieta, distant from this thirty-three cords to the south, where I ordered placed a heap of stones and a cross as a monument? Returning to the cross monument of the north where this measurement was begun, the direction of the west was taken, and thereon were measured and counted one hundred and thirteen cords, which ended on a transverse mountain spur, well wooded, that fronts to the south with a peak, and towards the north with a rocky gulch, where I ordered placed a heap of stones and a cross as a monument. From there the measurement was continued towards the west, and there were measured and counted two hundred and fifty cords, which ended on the cross monument in this direction. Taking the direction of the south, there were calculated up to the foot of the mountain of Mogollones on a white hill which is the corner monument on the west of the lands of the springs of Gato, Baltazar, Tomas Romero, &c., surveyed in favor of Mr. Jose Rafael Elias, his son, Mr. Jose Juan, and his wife, Mrs. Guadalupe Perez. From the aforesaid point the direction of the east was taken and thereon were
 204 calculated two hundred cords to the cross monument of the south. From there the measurement was continued in the same direction of the east a distance of seventy-three cords, which ended at the first stopping place of the campaneros, on a bare tableland and fronting towards the north, with the last clump of cottonwood trees, the largest to be found in the valley of Santa Barbara on the creek of Hollow Waters. The direction of the north having been taken, being a thickly wooded country, there were calculated up to the cross monument of the east two hundred and fifty-eight cords, which ended on the same, and from this in the same direction, and for the reasons already expressed, there were calculated one hundred cords up to the corner monument of the lands of Auga Prieta, this survey being in this manner finished, comprising in this last survey, which composes the lands of Naydenivacachi and Santa Barbara, eleven and one-half sitios and twelve and one-half caballeris; all of which is herein set down in the proceeding, which I sign with my assistants according to law, the rest of the officers who accompany me not doing so because they do not know how.

I attest :

JOAQUIN VICENTE ELIAS.

Assistant :

JOSE PERFECTO FLOYOS.

Assistant :

LEONARDO LUQUE. [RUBRICAS.]

At the aforesaid place, on October 1, 1835, I, the acting judge commissioner, in order to have all the surveyed land appraised, had

to order and did order that from among the officers who had accompanied me two be appointed for that purpose; and having selected for that purpose the citizens Jose Ma Luque and
 205 Julian Sillas, I notified them of their appointment; and after having accepted said appointment and made oath in due form of law well and truly to discharge the duties of said office, they said that the six and one-half sitios comprised in the survey of the Auga Prieta they held to be worth for one sitio sixty dollars, on account of its containing a limited water-course (or watering place) and the others to be worth fifteen dollars each as they consisted of absolutely dry land, making the total amount of the appraisement one hundred and forty-two dollars and four reals; that the eleven and one-half sitios together with twelve and one-half caballerias contained in the lands of Naydenivicachi and Santa Barbara they appraised one in the sum of eighty dollars, one in the sum of sixty and the balance in the sum of fifteen dollars each, making a total amount of two hundred and ninety dollars, which with the first makes a total sum of four hundred and thirty-two dollars and four reals; and finding that the said appraisement was in accordance with the laws in force in the premises, I was satisfied therewith.

In witness whereof I made this record which I signed with the usual witnesses in the absence of a notary, according to law, the appointed appraiser not knowing how to sign; to all of which I certify.

JOAQUIN DE ELIAS.

Witness:

JOSE PERFETO FLOYOS.

Witness:

LEONARDO LUQUE. [RUBRICAS.]

Immediately thereupon I, the said judge ordered the suspension of the present proceedings, in order to continue them at the capital of Arispe on my arrival there.

In witness whereof I signed before the usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness:

JOSE PERFETO FLOYOS.

Witness:

LEONARDO LUQUE. [RUBRICAS.]

206 At the capital of Arispe on the 12th day of the month of October, 1835, I, the acting judge, ordered the suspension of these proceedings because of important causes which compelled me to do so.

In witness whereof I made this record with the usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness:

MIGUEL CAMPOY.

Witness:

BRIGIDO REYES. [RUBRICAS.]

At the capital of Arispe, on the 3rd day of the month of June, 1836, I, the commissioner appointed to act in these matters, ordered their continuance, and to this end the first offer for bids in due form of law shall take place tomorrow.

In witness whereof I make this statement, which I sign with the usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness:

MIGUEL CAMPOY.

Witness:

BRIGIDO REYES. [RUBRICAS.]

1. At the city of Arispe, the capital of the department of Sonora, on the 4th day of the month of June, 1836, I, the aforesaid commissioner, in order to put into effect what has been ordered in the foregoing mandate, caused an offer for bids to be made by the beating of the drum by the police office- Loreto Salcido, which offer was actually made in these terms: There are for sale on account of the public treasury of the department eighteen sitios and twelve and one-half caballerias for raising cattle which compose the places Auga Prieta Naydenivacachi and Santa Barbara, surveyed in favor of the citizens Juan, Rafael and Ygnacio Elias Gonzales, which are appraised in the sum of four hundred and thirty-two dollars and four reals. Any one who wishes to bid more than their ap-
207 praisement may come before me as commissioner, where his bid will be received; and no bidder appearing at the time, I made this record thereof, which I signed with the usual witnesses according to law.

JOAQUIN DE ELIAS.

Witness:

MIGUEL CAMPOY.

Witness:

BRIGIDO REYES. [RUBRICAS.]

2. At the aforesaid capital, on the 5th day of the said month and year, another auction was held and no bidder appearing I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

3. At the same capital, on the 6th day of the said month and year, another auction was held, and there appearing no bidder this statement was made, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

4. At the aforesaid capital, on the 7th day of the said month and year, another auction was held, and there appearing no bidder I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

5. At the aforesaid capital, on the 8th day of the said month and year, another auction was held, and there appearing no bidder, I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

6. At the said capital, on the 9th day of the said month and year, another auction was held, and there appearing no bidder, I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUCAS CARRANCO.

Witness :

BARTOLO MIRANDA.

7. At the same city, on the 10th day of the above-mentioned month and year, another auction was held, and no bidder having appeared I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

8. At the aforesaid capital, on the 11th day of the said month and year, another auction was held, and there appearing no bidder, this statement was made, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

9. At the said capital, on the 12th day of the said month and year, another auction was held, and no bidder having appeared I so stated with the usual witnesses according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

10. At the same capital, on the 13th day of the said month and year, another auction was held, and no bidder appearing I so stated with the usual witnesses according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

11. At the said capital, on the 14th day of the same month and year, another auction was held, and there appearing no bidder, I signed this statement with the usual witnesses according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

12. At the aforesaid capital, on the 15th day of the said month and year, another auction was held, and there appearing no bidder I made this statement, signed by myself and the usual witnesses, according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

13. At the aforesaid capital, on the 16th day of the said month and year, another auction was held, and no bidder having appeared, I made this statement, which I signed with my witnesses.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

14. At the same capital, on the 17th day of the said month and year, another auction was held, and there appearing no bidder, I so state with the usual witnesses according to law.

V. ELIAS.

Witness:

LUIS CARRANCO.

Witness:

BARTOLO MIRANDA.

15. At the said capital, on the 18th day of the same month and year, another auction was held, and there appearing no bidder I made this statement, which I signed with the usual witnesses in due form of law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

16. At the aforesaid capital, on the 19th day of the said month and year, another auction was held, and there appearing no bidder I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

208 $\frac{1}{2}$ 17. At the said capital, on the 20th day of the said month and year, another auction was held, and no bidder having appeared I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

18. At the same capital, on the 21st day of the said month and year, another auction was held, and there appearing no bidder I so state, with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

19. At the said capital, on the 22nd day of the said month and year, another auction was held, and there appearing no bidder, I so state with the usual witnesses, according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

20. At the aforesaid capital, on the 23rd day of the said month and year, another auction was held, and no bidder having appeared I signed this statement with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

21. At the said capital, on the 24th day of the same month and year, another auction was held, and there appearing no bidder I so stated with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

209 22. At the same capital, on the 25th day of the said month and year, another auction was held, and there appearing no bidder, I so stated with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

23. At the aforesaid capital, on the 26th day of the said month and year, another auction was held and no bidder having appeared I made this statement, which I signed with the usual witnesses according to law.

V. ELIAS.

Witness :

BARTOLO MIRANDA.

Witness :

LUIS CARRANCO.

24. At the aforesaid capital, on the 27th day of the said month and year, another auction was held, and there appearing no bidder I so stated with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

25. At the said capital, on the 28th day of the same month and year, another auction was held, and there having appeared no bidder I so stated, signing with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

26. At the same capital, on the 29th day of the said month and year, another auction was held, and there appearing no bidder, I made this statement with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

27. At the aforesaid capital, on the 30th day of the said month and year, another auction was held, and there appearing no bidders I signed this statement with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

28. At the aforesaid capital, on the 1st day of July, of the said year, another auction was held, and there appearing no bidder I so state with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

29. At the aforesaid capital, on the 2nd day of the said month and year, another auction was held, and there appearing no bidder I signed this statement with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

30. The same capital, on the 3rd day of the said month and year, another auction was held, and no bidder having appeared I so stated, signing with the usual witnesses according to law.

V. ELIAS.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

At the aforesaid capital, on the 4th day of the said month and year, I, the commissioner appointed for the execution of these proceedings, which are now concluded, order their transmittal to the office of the treasurer general.

In witness whereof I sign this statement with my usual witnesses according to law.

Witness :

J. MARIA DE VALOIS.

Witness :

BARTOLO MIRANDA.

JOAQUIN DE ELIAS.

MEMORANDUM.—On the 7th day of the said month and year these proceedings were transmitted to the office of the treasurer general upon stamped paper, and I so note the fact.

211 Arispe, September 3, 1836.
To the promotor fiscal.

[RUBRICA.]

MILLA. [RUBRICA.]

Honorable treasurer general :

This expediente which has been submitted to my consideration as promotor fiscal was ordered by Your Excellency in consequence of a petition presented to the treasurer general on July 21, 1831, by the citizens Juan, Rafael and Ygnacio Elias Gonzales, of this vicinity, in which they ask to have granted to them the public lands to be found at the places called Santa Barbara Naydenivacachi, Auga Prieta and Coaguyona, lying to the north of the presidio of Fronteras, because the lands they now occupy are not sufficient to support in them the amount of cattle belonging to them. Wherefore by decree of October 10, of the said year Your Excellency issued a full commission to the citizen Joaquin Vicente Elias, resident of San Ygnacio, and today secretary of the supreme government of the department to execute with all the requisites of law the survey appraisalment, and to make publication of the said lands in favor of the above-mentioned Messrs. Elias. In virtue thereof the survey having been made of the said public lands, there resulted eighteen sitios, twelve and a half caballerias, which were appraised and adjudicated in the following way : the six and a half sitios which compose the survey of Auga Prieta were valued one at sixty dollars as it has a small spring, and the remaining five and a half at the rate of fifteen dollars each, as they are absolutely dry, and the eleven and a half sitios and twelve and one-half caballerias which contain the lands of Naydenivacachi and Santa Barbara, were appraised, one
212 at eighty dollars, another at sixty and the rest at fifteen dollars, which sums make a total of four hundred and thirty-two dollars and fifty cents. He who answers says that the appraisements made by the appointed experts being in conformity with the provisions of the organic law of the treasury, No. 26 of eleventh of July, 1834, there is no obstacle to prevent the treasury from ordering the public auction by the board, and to issue the proper title of transfer in favor of the interested parties or of the highest bidder. This is the opinion of the promotor fiscal in compliance with his duty. Nevertheless Your Excellency may do whatever is best.

Arispe, September 12, 1836.

PEDRO RODRIGUEZ. [RUBRICA.]

I transmit to you upon twenty-four sheets of stamped paper the expediente issued by virtue of the commission which this treasury saw fit to bestow upon me for the measurement of the lands comprised in the places Auga Prieta, Naydenivacachi and Santa Barbara, denounced by Don Juan Don Rafael and Don Ygnacio Elias, situate towards the northern part of the presidio of Fronteras, and comprising eighteen sitios and twelve and one-half caballerias of land for raising cattle, appraised in the sum of four hundred and thirty-two dollars and four reals, in order that you may make such use of this document as you may see fit.

Very respectfully, &c. God and liberty.

Arizpe, July 14, 1836.

To the treasurer general of the department.

JOAQUIN DE ELIAS.

Arizpe, September 15, 1836.—As the attorney general requests in his foregoing answer, the three public auctions in due form, shall be proceeded with to effectuate the final sale of the lands of which this expediente treats, and for this purpose the members who compose the junta shall be summoned to appear at his office of the treasury.

MILLA. [RUBRICA.]

1st almoneda. The capital of Arizpe, on the 15th day of the month of September, 1836, there being assembled as a board of sale (junta de almonedas) at the office of this treasurer general of the department the president and members who compose it, the citizens Jose Hustomilla, treasurer, Julian Padilla, judge of the first instance by virtue of the law of this district, and Pedro Rodriguez Guzman, promotor fiscal (attorney general), they ordered that at the beat of the drum the public should be asked to make bids, and they were actually so asked in a loud and clear voice by the auctioneer, Loreto Salcido, who said "There are going to be sold on account of the public treasury of the department eighteen sitios and twelve and one-half caballerias of land for the raising of cattle and horses comprised in the places called Auga Prieta, Naydenivacachi and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, in the district of this capital, surveyed at the request of the citizens Juan, Rafael and Ygnacio Elias Gonzales, of this town, and appraised in the sum of four hundred and thirty-two dollars and four reals, as follows: the six and one-half sitios which compose the survey of Auga Prieta one in the sum of sixty dollars on account of having a small spring, and the other five and one-half at the rate of fifteen dollars each, on account of their being absolutely dry; and the other eleven and one-half sitios together with twelve and one-half caballerias, of which the other two places consist, one in the sum of eighty dollars, one in the sum of sixty and the others at fifteen dollars each, all of which sums together go to make up the said total amount of four hundred and thirty-two dollars and four reals. Whosoever wishes to bid on the said land, let him come forward and make his bid in due form before

this commission, where his bid will be received, with the understanding that on the day after tomorrow the sale will stand concluded in the highest bidder; " and there having appeared no bidder these proceedings were closed, in witness whereof this statement was signed by the president and members of this commission.

MILLA.

PADILLA.

RODRIGUEZ.

[RUBRICAS.]

2nd almoneda. At the same capital on the 16th day of the said month and year, this junta de almoneda being assembled, another auction was held similar in everything to the foregoing, the public being notified that at twelve o'clock on the following day the sale would be finally made to the highest bidder who might appear of the eighteen sitios and twelve and one-half caballerias of which this expediente speaks; and no bidder having appeared these proceedings were closed, in witness whereof this statement was signed by the president and members of this commission.

MILLA.

PADILLA.

RODRIGUEZ.

[RUBRICAS.]

3rd almoneda. At the capital of Arizpe, on the 17th day of the month of September, 1836, there being assembled as a junta de almonedas, at the office of this department, the president and members who compose it, the citizens Jose Justo Milla, treasurer, 214] Julian Padilla, judge of the first instance by virtue of the law of this district, and Pedro Rodriguez Guzman, promotor fiscal (attorney general), they proceeded to hold the third and last auction for the sale of the eighteen sitios, twelve and one-half caballerias of land comprised in the places known by the names of Auga Prieta, Naydenivacachi and Santa Barbara, an offer of bids being demanded in the same terms and with the proper formality as in the two previous ones, the public being notified three times that on this very day the sale at auction should be final. At this time there appeared the citizen Rafael Elias, bidding for himself and in the name of his partners and brothers, the citizens Juan and Ygnacio Elias Gonzales, the above-named sum of four hundred and thirty-two dollars and four reals, at which the said lands were appraised; and the midday bell of this day having now struck without a bidder appearing who offered more, the auctioneer at last said in a loud and clear voice "For the first time, for the second time, for the third time, going, going, sold to the said Rafael, Juan and Ygnacio Elias Gonzales." In these terms this act was concluded, the said eighteen sitios and twelve and one-half caballerias of land which compose the said places of Auga Prieta, Naydenivacachi and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras having been publicly and solemnly sold to these interested parties for the said sum of four

hundred and thirty-two dollars and four reals, at which said lands had been appraised.

In witness whereof this statement was made and signed by the president and members of this junta de almonedas, together with the said Don Rafael Elias.

MILLA.
PADILLA.
RODRIGUEZ.
RAFAEL ELIAS.
[RUBRICAS.]

214½ Arispe, September 17, 1836.—The sale of the eighteen sitios, twelve and one-half caballerias of land for raising cattle and horses which comprise the places called Auga Prieta, Naydenivacachi and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, having now been concluded in favor of the citizens Juan, Rafael and Ygnacio Elias Gonzales, as stated in the foregoing report of the auctions, the interested party shall be notified and given to understand that he must for himself, and on behalf of his other two partners and brothers proceed to pay into this treasury the said sum of four hundred and thirty-two dollars and four reals, for which the said lands was publicly sold, and the certificate of said payment, made in the usual form must be attached to this expediente, and upon this payment being so made title of sale shall be issued to the interested parties for their protection according to law. The treasurer general of the department of Sonora thus provided, ordered and signed with the usual witnesses in the absence of a notary, according to law.

JOSE JUSTO MILLA.

Witness:

BARTOLO MIRANDA.

Witness:

SANTOS VEGARRIA. [RUBRICAS.]

On the same day, month and year, the citizen Rafael Elias being present, he was notified of and given to understand the preceeding order, and having understood it he said that he hears it and that he is ready to make immediate payment of the thirty dollars to which the title amounts, as provided by law. This he answered and signed together with the treasurer general and usual witnesses.

JOSE JUSTO MILLA.
RAFAEL ELIAS.

Witness:

BARTOLO MIRANDA.

Witness:

SANTOS VEGARRIA. [RUBRICAS.]

215 On the 28th day of December, 1836, was issued the title of sale of the lands to which expediente refers, and it is recorded on the reverse of sheet No. 41 of the respective book.

[RUBRICA.]

This is a true and faithful copy of the original title which exists in the archives of this treasurer general's office; it is corrected and compared on these sixteen sheets of paper, containing the necessary stamps, to which is to be added that all the sheets of the original consist of legal stamped paper. Authorized and signed in the city of Hermosillo, capital of the State of Sonora, Republic of Mexico, on the 1st day of the month of March, one thousand eight hundred and ninety-five.

V. AGUILAR.

I, Victor Aguilar, treasurer general of the State of Sonora, Republic of Mexico, certify that in the Book of Toma de Razon of titles of lands which exists in these archives there is on the reverse of sheet No. 41 an entry of which the following is a copy:

"On December 28, 1836, was issued the title of sale of eighteen sitios, twelve and a half caballerias of land for raising cattle and horses, which comprise the places called Naydenivacachi, August Prieta and Santa Barbara, in the jurisdiction of the presidio of Fronteras, in favor of the citizens Juan, Rafael and Ygnacio Elias Gonzales, of this city.

MENDOZA [RUBRIC.]"

In witness whereof I give this certificate in the city of Hermosillo capital of the State of Sonora, on the 1st day of March, 1895.

V. AGUILAR.

216 I, Rafael Izabal, constitutional vice-governor of the State of Sonora, in the exercise of the executive power, certify that the citizen Victor Aguilar is, as he styles himself, the treasurer general of the State, and that the foregoing signature was made by him.

Hermosillo, March 2, 1895.

RAFAEL YZABAL.

RAMON CORRAL, Sec'y.

OFFICE OF THE TREASURER GENERAL
OF THE STATE OF SONORA.

Certificate of Payment No. 258.

I certify that Mr. Bartolome Rochin paid into this office the sum of \$5.20, including 30 % federal fees for the attestation made by the governor of the State to the signature of the treasurer general of the same.

Hermosillo, March 2, 1895.

For the treasurer general, JUAN GARCIA.

For the State.....	\$4.00
30 % federal.....	1.20

\$5.20

(Endorsed :) Santiago Ainsa, adm., vs. U. S. *et als.* Translation of original matrix and record in Toma de Razon. Filed in the office of the clerk, court of private land claims, Mar. 16, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy. S. M. Franklin & Rochester Ford, att'ys for pl'tff.

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PLAINTIFF'S EXHIBIT "E."

Título

de merced de diez y ocho sitios y doce y media caballerias de tierra para cria de ganado mayor y caballada que comprenden los puestos nombrados Naydenibacachi, Agua Prieta y Santa Barbara, sitios en jurisdiccion del Presidio de Fronteras espedido por la Tesoreria general del Departamento de Sonora, a favor de los ciudadanos Juan, Rafael é Ygnacio Elias Gonzales de esta vecinidad.

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 Dice reales { Sonora } de 1833 y 1834.

Habilitado por el Departamento de Sonora para el bieno de 1835 y 1836.

Jose Maria Mendosa, Tesorero general del Departamento de Sonora por cuanto el articulo 11, del soberano decreto numero 70, del Congreso general flia 4 de Agosto de 1824, concede a los Estados las rentas que en dicha ley no se reservo aquella y siendo una de ellas la de los terrenos de sus respectivos distritos que les pertenecen en consecuencia; para cuya mercenacion dictó el Honorable Congreso que fué unido de Sonora y Sinaloa, la ley numero 30 de 20 de Mayo de 1825, asi como las sucesivas legislaturas otros, decretos relativos; cuyas disposiciones han quedado refundidas en las secciones 3a. 4a. 5a. 6y 7a. del Capitulo 9a de la ley organica de Hacienda numero 26 de 11 de Julio de 1834, y habiendose presentado ante esta Tesoreria general los cuidanos Juan, Rafael é Ygnacion Elias Gonzales por escrito de 21 de Julio de 1831, registrando las aguas ó terrenos de Santa Barbara, Naidenibacachi, Agua Prieta y Cabuyona, esta Tesoreria pon decreto de 12 de Agosto del mismo año mando seguir una informacion sobre si los registran tes poseen el numero de bienes que manifestaran, si positivamente ne les son suficientes para mantener dichos bienes los sitios que poseen en San Pedro y Cienega de Heredia si por consecuencia tienen una verdadera necesidad de los enunciados terrenos, y si estos se hallan fuera de la linea de los Presidios, el Alcalde de esta ciudad practicó la informacion referida, y resultando por ella una conformidad, en lo pedido por los interesados por el decreto de 10 de Octubre del citado año se confirio comicion.

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bastante al ciudanos Joaquin Vicente Elias quien la administ como se acredita del escrito provido y auto de obedecimeinto siguen.—Sor. Tesorero general del Estado—los cuidanos Juan Rafael e Ygnacio Elias Gonzales, ante V. S. comparecen por medio de la presente instancia diciendo que en los terrenos de San Pedro Cienega de Heredia que les pertenece en jurisdiccion del Presidio de Santa Cruz tienen cria de ganado mayor y de Lana cuyo numero actualmente no pueden mantener en los sitios que les pertenece conforme es notario y publico—Por esta cuasa sus ganados se le diseminan por los cuatro rumbos, pero muy particularmente por las aguas de Santa Barbara, Naidanibacachi, Agua Prieta y Coaguayona, con lo que resienten perjuicios incalculables, por que con realengos se introduce a tales terrenos libremente el que quien recoje, corre y esta actidad para proceder como guste sin que sea necesario nuestro consentimiento ni permiso, de lo que son muy consiguientes desahires, robo y que los mismos ganados aumenten mas y mas—Para obviar semejantes perjuicios y daños y para que los terrenos de nuestros criaderos sean suficientes al numero de ganado que hoy tenemos y debe aumentarse proporcionalmente a pesar de los continuados daños que causan los Indios enemigos de guerra, nos hallamos en el caso de poner formal denuncia conforme lo ejecutamos al terreno que resulte realengo dentro de los puntos y aguajes citados, los que lindan por el Norte con la cierra de Chiricagüi, por el Sur con terrenos de los Sinaloenses por el Oriente con la sierra de Coaguayona, y por el Poniente con terrenos del Ians—Por tanto á V. S. pedimos y suplicamos se circunscriba conforme a la ley de 20 de Mayo de 1825 y á la facultad que le concede su artículo 22, admitir el demuncio, que hacemos á los citados terrenos, y espedir el correspondiente decreto para sus medidas de avaluo, pregones, remate y demas que corresponde se ejecute hasta la espedicion del titulo, portéstando satisfacer los derechos, costos y lo necesario Etc—a. Arispe, Julio 21 de 1831. Juan Elias Gonzales,—Rafael Elias, Ygnacio Elias.

Hermosillo 10 de Octubre de 1831—

En atencion á que la antecedente informacion justifica legal y suficientemente que los ciudadanos Juan Rafael é Ygnacio Elias Gonzales tienen una considerable abundancia de bienes se movientes que no caben en los sitios que poseen en propiedad en los pueblitos

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de San Pedro y Sienega de Heredia de la jurisdiccion del Presidio de Santa Cruz y que por esta causa les son de summa necesidad los terrenos baldios que han registrado nombrados Santa Barbara Naidenibacachi, Agua Prieta y Coaguayona confierese desde luego comicion bastante en forma al ciudadano Joaquin Vicente Elias

vecino de San Ygnacio, para que sin perjuicio de tercero que mejor derecho represente, con previa citacion de colindantes, proceda con todos los requisitos de estilo, á la mensura de los mencionados baldios, practicando las medidas avaluo y pregones con arreglo á lo prevenido en el soberano—

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220 decreto del Congresso Constituyente que fue del Estado Unido No. 30 de 20 de Mayo de 1825, y su respectivo reglamento asi como á lo dispuesto en el decreto numero 175 de 20 de Noviembre de 1830, y demas determinaciones y reglas vigentes de la materia, y evacandas que sean dichas diligencias las remitirá original es á esta Tesoreria, citando á los interesados para que ocurran por si ó por apoderados al remate que de las referidas tierras debe celebrarse en junto de almonedas de esta ciudad. El Tesorero general del Estado asi lo determinó, mandó y firmó con testigos de asistencia á falta de Escribano que no les hey segun derecho—Mendoza—De. Assa. Ygnacio Escobosa—De. Assa. Mariano Romero.

Recibida la antecedente comicion que por el Sor. Tesorero general senne confiere para la mensura de los terrenos que los ciudadanos Juan, Rafael é Ygnacio Elias Gonzales, han registrado en los parajes conocidos con los nombres de Santa Barbara, Naidenibacachi, Agua Prieta y Coaguilyona, y mediante á la aceptacion que de ella hago, reservese porfin para cuando calmen las novedades de los Indios barbaros. Y para constancia senté esta diligencia que firmé con los de mi asistencia segun derecho—Joaq. V. Elias—Assa. Brigido Reyes—Assa. Miguel Campoy.

Con Fha. 20 de Agosto de 1835 paso el comisionado auto proceder á la mensura de los terrenos que se espresan, con motivo á que los barbaros enemigos daban lugar á ello por haver suspendido sus hostilidades, hizo citacion de colindantes y nombramientos de oficiales dedidores, contadores, y apuntadores, en los ciudadanos Juan Eufasio de la Cruz, Juan Samaniego, Eugenio Moreno, Julian Sillas, Pedro Luque, y Manuel Samaniego; a quienes recibí juramento en forma bajo del cual prometieron cumplir fiel y legalmente con sus encargos, y en seguida practico la mensura como consta de las diligencias que siguen.—

221 En el puesto de la Agua prieta, á los viente y ocho dias del mes de Setiembre de mil ochocientos treinta y cinco, yo el Juez comisionado para la practica de estas diligencias, a efecto de comenzar la medida entregé á los oficiales nombrados un cordel de estilo bien encerado y una vara de medir, é hice que á mi presencia y la de los.

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de mi asistencia escrupulosamente midiesen y contasen cincuenta varas, lo que verificado asi mande que sus extremos fuesen atados á

dos sancos de palo, se entregó á los mendidores, y habiendo dicho al apoderado de los Señores Elías, señalase el punto que gustan por centro, lo hizo así en una laguna que esta en medio de una valle que lleva el nombre del mismo paraje y el medio en todo la circunferencia; acto continuo se observó el rumbo del Sur, y por el se fueron midiendo y contando escrupulosamente cincuenta y nueve cordeles que remataron en un monton de sauces que estan en medio del valle, los cuales—

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serviran de mojoneras en interin las ponen las partes de cal y canto como esta prevenido. Buelto al centro se observó el rumbo del Norte y valle arriba se medieron cien cordeles que remataron en una lomita muy pequenita, frente por el Oriente con el puerto que nombran de la Silla, habiendo decho que allí se pusiese un monton de piedras y una Cruz en señal de mojonera. Buelto al centro se tomó el rumbo del oriente y por el se midieron y contaron ciento se senta y ocho cuerdas que remataron en una loma alta, que está á la derecha del puerto que está por donde pasa el camino antiguo de

222 Santa Cruz para San Bernardino, en donde mande poner un monton de piedras y una Cruz en señal de Mojonera. Buelto al centro se tomó el rumbo del poniente y por el se midieron y contaron doscientos cuarenta cuerdas, que remataron adelantito de donde descabeza la sierrita que se vé por el citado rumbo, en un serro colorado tendido que tiene una ceja para la parte de Sur, y frente por el mismo poniente con lo mas alto de la Sierra de San Jose, en donde mande poner un monton de piedras y una Cruz en senal de mojonera y Siendo ya entrada la noche, dispuse suspender la medida para continuarla el dia de mañana, y para constancia lo puse por deligencia que firmé con los de me asistencia segun derecho por no saberlo hacer los demas oficiales de que doy fé—Joaquin Vicente Elias—Assa—Jose Perfecto Floyos—Assa—Leonardo Luque.—

En el puesto de la Agua prieta á los veinte y nueve dias del mes de Setiembre de mil ochocientos treinta y cinco, yo el Juez comisionado á efecto de continuar la secula de estas diligencias me deriji con los oficiales nombrados á la mojonera del Norte, y habiendo observado el rumbo del oriente, por el se midieron y contaron ciento sesenta y ocho cordeles que remataron immediato el puerto de la Silla en una loma pequenita que esta á la derecha, y inmediata á otras dos mas altas en donde mandé poner un monton de piedras y una Cruz en senal de mojonera. Buelta á la mojonera del Norte de donde partio

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la medida, y habiendose observado el rumbo del poniente, y por el se midieron y contaron doscientos cuarenta cuerdas que remataron

en un pequeño cerrita que está frente á la mojonera Cruz del citado rumbo, en donde se hizo poner otro y una cruz, de aquí observando el rumbo del sur se midieron y contaron ochenta y nueve cordeles que remataron en la mojonera Cruz del rumbo del Poniente, 223 y continuando con direcccion al citado rumbo del Sur, se midieron sesenta cuerdas que remataron al pie de un cerro alto, frente por el Sur con otro cerro que tiene un creston prieto, y por el oriente con un puerto.

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que á la izquierda tiene dos cerros que la forman unos crestones colorados; en donde mande poner un monton de piedras y una Cruz en señal de mojonera, de este punto habiendo observado el rumbo del oriente por el se midieron y contaron doscientos cuarenta cuerdas que remataron en la mojonera Cruz del Sur en el monton de sauces que hantes se ha espresado, de allí se graduaron ciento setenta y ocho cordeles por el rumbo del oriente á la falda del primer puerta que está á la derecha del punto donde remató la mojonera Cruz del mismo rumbo quedando ambos puntos linea recta á las faldas de la sierra del perrillo; y de allí hacia el rumbo del Norte se graduaron cincuenta y nueve cordeles que remataron en la mojonera Cruz del oriente quedando de este modo concluida la medida que comprende en su area, sacada la cuenta con toda exactitud seis y medio sitios escasos habiendo advertido á la parte quien manifesto conformidad con lo practicado que oportunamente inteligencia á sus partes de que hagan construir las mojoneras de cal y canto conforme está prevenido, Y a efecto de hacerlo lo puse por diligencia que firmé con los de mi asistencia segun derecho por no saberlo hacer los demas oficiales que me acompañaron—Joaquin V. Elias—Assa—Jose Perfecto Floyos—Assa—Leonardo Luque.

Puesto el que suscribe en un punto que le designió el opoderado de los Señores Elias con el fin de proceder á la mensura de los terrenos de Santa Barbara y Naidenibacachi hizo el citado opoderado le designase el punto centrico y habiendolo verificado cuan en el 224 centro de los dos parejes que quedan mencionados un poco cargado al oriente en un cerro se observá el rumbo del Norte y por else midieron y contaron ciento sesenta y cinco cordeles que remataron adelantito del agau del Naidenibacachi en una lomita pequeña que queda por el Norte frente la derecha a tres cenos altos y uno por el oriente é inmediato por el Sur, con un fresnal. Buelto al centro se observo el rumbo del Sur, y por el se midieron y contaron doscientos cincuenta y ocho cordeles que remataron en la punta de una cuchilla á distancia de tres cordeles

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para el oriente, en la misma linea la mojonera esquina de los terrenos de la agua de Baltazar, la del Gato &ca.—adjudicados a D. Jose Rafael Elias, su hijo D. Jose Juan y su Esposa Doña Guadalupe Perez, en donde mande poner un monton de piedras y una Cruz en señal de mojonera. Buelto al centro se observó el rumbo del poniente y por el se midieron y contaron doscientos cordeles que remataron un poco mas arriba del paraje de Santa Barbara al otro lado del arroyo en cerro blanco que esta inmediato a un picacho por la parte del Norte y por el Sur, linea recta con el cerro de Magallanes en bastante distancia en donde

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mandé poner un monton de piedras y una señal de Cruz por mojonera. Buelto al centro se observó el rumbo del oriente y se medieron sesenta y tres cordeles que remataron al otro lado de un bajio grande en una lomita colorado, que esta inmediata á una cañada tazcalosa y frente á la cordilla de la sierrita del Naidenibacachi y á una seja blanca de la cumbre de la sitada Sierra; y siendo ya entrada la noche de este dia dispuse la suspension de la medidas que estoy practicando para continuarlas el dia de mañana respecto de su quadratura; y para hacerlo constar lo puse por diligencia
225 que firmé con los de mi asistencia segun derecho por no saberlo hacer los que me acompañaban—Joaquin V. Elias—Assa—Jose Perfecto Floyos—Assa—Leonardo Luque.

En el punto centrico de los terrenos que se estan mensurado, á los treinta dias del mes de Setiembre, de mil ochocientos treinta y cinco, el comisionado para la practica de estas diligencias dispuso su continuacion, á efecto de dar á la medida anterior su correspondiente cuadratura, y con tal fin se dirigió á la mojonera del Norte, y estando en ella hizo que se observara el rumbo del oriente y por el se fueron midiendo y contando cincuenta tres cordeles que remataron en un bajio grande al pie de un Tazcate unico que hay en toda la circunfrecia, y frente á unos cerros que tienen unos crestones colorados, y en la misma linea de la media cuadra de la mojonera esquina del poniente de la agua prieta en distancia de esta de trienta y tres cordeles al Sur, en donde mande poner un monton de piedras y una Cruz en senal de mojonera. Regresado á la mojonera Cruz del Norte donde dió principio esta medida, se observó el rumbo del poniente, y por el se midieron y contaron ciento trece, cordeles que remataron en una cuchilla atravesada otillosa que esta frente al Sur con un picacho, y para el Norte con un cajio tazcaloso, en donde mandé poner un monton de piedras y una Cruz en señal de mojonera, de aquí se tiró la medida hacia el poniente y se midieron y contaron

doscientos cincuenta cordeles que remataron en la mojonera Cruz de este rumbo, observando el rumbo del Sur se graduaron hasta

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la falda del cerro de Magallanes en un cerro que hace la mojonera esquina del poniente de los terrenos de las aguas del Gato, Baltazar,

226 Tomas Romero & a mensurados en favor de D. Jose Rafael Elias, su hijo, D. Jose Juan y su esposa Da. Guadalupe Perez.

Del punto citado se observó el rumbo del oriente se graduaron doscientos cordeles hasta la mojonera Cruz del Sur, de aqui se continuo la medida por el mismo rumbo del oriente y habiendose verificado de setenta y tres cordeles, remataron en el primer paraje de los compañeros en una mesa limpia y frente por el Norte, con el ultimo monton de Alamos mas grande que se halla en el Valle de

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Santa Barbara en el arroyo de los huecos de agua, observado el rumbo del Norte, por la aspereza del terreno, se graduaron hasta la mojonera Cruz del oriente, doscientos cincuenta y ocho cordeles que remataron en la misma, y de esta por el mismo rumbo y por las causas tambien espresadas, se graduaron cien cordeles hasta la mojonera esquina de los terrenos del Agua prieta, quedando asi concluida esta medida y comprendiendose en la crea de esta ultimo que forman los torrenos del Naibenibacachi y Santa Barbara, once y medio sitios con doce y media caballerias. Todo lo que se hace constar por diligencia que firmo con los de mi asistencia, segun derecho dejando de hacerlo los demas oficiales que me acompañon por no saber de que doy fé—Joaquin Vicente Elias—Assa—Jose Perfecto Floyos—Assa—Leonardo Luque.

Con fita. 1^a de Octubre el Agrimensor por el medio de dos peritos inteligentes y de practicos conocimientos que lo fueron los ciudadanos Jose Maria Luque y Julian Sállas, á justipreciar los terrenos medidos, quienes juramentados en forma y bien inteligencia dos con sujecion á la ley organica de hacienda, valuaron los dies y ocho sitios doce y media caballerias de tierra en la cantidad de = cuatrocientos treinta y dos pesos cuatro reales; con cuyo valor los saco al pregon 227 por treinta dias consecutivas en solicitud de postores desde 4 de Junio hasta 3 de Julio del corriente año. No resultó ninguno. — Concluyó el espediente, y con auto de 7 del mismo mes lo pasó á esta Tesoreria la que por decreto de 9 de Setiembre lo pasó á so promotor Fiscal, quien emitió el dictamen siguiente.

Señ. Tesorero general—Este espediente se ha pasado á mí vista, como, Promotor fiscal de hacienda, fué mandado instruir por V. S. en virtud del escrito que presentaron á esa Tesoreria general in 21 de Julio de 1831 los ciudadanos Juan Rafael Y Ygnacio Elias Gonzales

de esta vecindad, en que solicitan se les adjudiquen los terrenos que se hallen baldios en los parajes nombrados Santa Barbara, Naidenibacachi, Agua prieta y Cuaguyona por la parte del Norte del presidio de Fronteras, respecto a que los sitios que ocupan no son suficientes, para mantener en ellos el numero de bienes de campo que les pertenecen—En consecuencia por decreto de 10 de Octubre del año citado se sirvo V. S. librar comision bastante al ciudadano Joaquin Vicente Elias vecino de San Ygnacio y hoy secretario del Supremo Gobierno del departamento, para que procediera con todos los requisitos de estilo a la mensura valuo y

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pregones de los referidos terrenos á favor de los mencionados Señores Elias.

En tal virtud y habiendose verificado la mensura de los espresados huecos y baldios resultaron en todos ellos dies y ocho sitios y doce y media caballerias para cria de ganado mayor y caballada, los cuales fueron valuados y justipreciados en los terminos siguientes; los seis y medio sitios que comprende la medida del Agua prieta, uno en sesenta pesos por tenor un corto aguaje y los cinco
 228 y medio restantes a razon de quines pesos por ser absolutamente secos, y los once y media con doce y media caballerias que contienen los terrenos de Naidenibacachi y Santa Barbara, una en ochenta pesos

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otro en sesenta y los demas á quince pesos; cuyas sumas hacen en total de # cuatto cientos treinta y dos pesos cuatro reales.

El que responde dice que estando conformes en un todo los valueros hechos por los peritos que al efecto se nombraron, con lo que previene la ley organica de hacienda numero 26 de 11 de Julio de 1834 no hay ningún inconveniente para que esa Tesoreria disponga que en junta de Almonedas se saquen á la hasta publica, y que se espida el correspondiente titulo de merced en favor de los interesados ó de quien mejore la postura—Este es al parecer del Promotor Fiscal de Hacienda en cumplimiento de su encargo—V. S. no obstante dispondra lo mejor. Arizpe, Setiembre 12 de 1836—Pedro Rodriguez.

Habiendose conformado esta Tesoreria general con el preinserto pedimento fiscal, por decreto de 15 de Setiembre del corriente año dispuso se procediese á la celebracion de las tres publicas almonedas en el mismo dia 15, 16, y 17 y no habiendo resultado ningun postor quedaron rematados los diez y ocho sitios, doce y media caballerias de tierra de los puntos nombrados Santa Barbara, Naidenibacachi; Agua prieta y Cuayugona á favor de los cuidadano a Juan, Rafael

é Ygnacio Elias Gonzales, como se justifica de la tercera almoneda que sigue.

En la capital de Arizpe á los diez y siete dias del mes de Setiembre de mil ochocientos treinta y sies convocados en junta de Almonedas en el oficio de esta tesoreria general del departamento los

229 Señores Presidente y vocales que lo acompañen ciudadanos Tesorero—Jose Juan Milla, Juez de la. Instancia por ministerio de la ley Julien Padilla y Promotor Fiscal, Pedro Rodriguez Guzman, se procedio a la practica de la 3d. y ultimo almoneda para el remate de los diez y ocho sitios, doce y media caballerias de tierra comprendidos en los puntos conocidos con los nombres de la Agua Prieta Naidenibacachi y Santa Barbara, dandose un pregon en los mismos terminos y con las propias solemnidades que los dos antecedentes, anunciandose al publico por tres veces, que ahora mismo debiera queda verificado el remate, en cuyo acto se presentó el Ciudadano

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Rafael Elias ofreciendo por si y a nombre de sus comparecioneros y hermanos ciudadanos Juan é Ygnacio Elias Gonzales los espresados cuatrocientos treinta y dos pesos cuatro reales en que fueron justipreciados dichas tierras, y siendo ya dado la plegaria de las doce de este dia sin que compareciese ningun otro mejor postor, dijo por ultimo el pregonero en altas y claras voces "a la una, a las dos, a las tres; que se remate, que se remate, que se remate; que buena, por les haga a los referidos Rafael, Juan e Ygnacio Elias Gonzales." En tales terminos se concluyo

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este acto quedando publica y solemnemente rematados á favor de estos interesados los nominados dies y ocho Sitios doce y media caballerias de tierra que comprenden los citados puntos de la Agua prieta, Naidenibacachi y Santa Barbara, sitos en jurisdiccion del Presidio de Fronteras, por la espresada cantidad de cuatrocientos treinta y dos pesos cuatro reales, en que fueron justipresiadas dichas tierras, y para la conveniente constancia se puso esta deligencia que

230 firmaron los señores Presidente y vocales de esta junta de Almonedas con el referido D. Rafael Elias—Milla—Padilla—Rodriguez—Rafael Elias—En el mismo dia se puso aueto para que el interesado D. Rafael Elias por si y á nombre de sus otros dos comparecioneros procidierra a enterar en esta Tesoreria los cuatrocientos treinta y dos pesos cuatro reales del valor del terreno y habiendolo verificado se espidio la conveniente certificacion que lo acredita y es del tenor siguiente.

Jose Maria Mendoza, Tesorero general de Departamenta de Sonora Cartifico que al folio—del libro manual de presente año economico se halla sentada una partida del tenor siguiente.

Diciembre 26—Cargo en mercedeo de tierra—Cuatrocientos y dos pesos cuatro reales enterados por el ciudadano Rafael Elias por si y a nombre de sus hermanos—Ber. D. Juan Y D. Ygnacio Elias Gonzales por el valor en que fueron rematados en junta de Almonedas de esta Tesoreria en 17 de Setiembre ultimo, diez y ocho sitios doce y media caballerias de tierra para cria de ganado mayor y caballada que comprenden los puestos nombrados Agua Prieta, Naidenibacachi, Santa Barbara, sitios en jurisdiccion del Presidio de Fronteras en al Partida de esta capital y de este entero se espidio la conviniente certificacion que deberá acreditarlo unida espediente original 432, 4, 0,—Mendoza—Rafael Elias.

Y para que conste donde convenga doy la presente en Arizpe á veinte y sies de Diciembre de mil ochocientos treinta y seis—Jose Maria Mendoza.

Agregado que fué la certificacion original al espediente de la materia se concluyo este con todos los requisitos y for malidades establecidas por las leyes quedando custodiado en al Archivo de esta Tesoreria general para perpetua constancia.

231 Por tanto usando de las facultades que me conceden las leyes por el presente y á nombre de la republica mejicana confiero merced en forma de derecho, de diez y ocho sitios dose y media caballerias de tierra para cria de ganado mayor y caballada que comprende los puestos nombrados, Agua Prieta, Naidenibacachi y Santa Barbara, sito en jurisdiccion del presidio de Fronteras en el partido de esta Capital y a favor de los cuidadanos Juan, Rafael Y Ygnacio

Sello cuarto	{	Estado	{	Una cuartilla
Para los anos de mil		Libre de		Ochocientos treinta y
Cinco y ochocientos		Sonora		Trienta y sies

Elias Gonzales, á sus herederos y sucesores concedo, doy y adjudica dichas terrenos por via de venta, y con las calidades, firmeza y subsistencia que establecen las leyes con, todas sus entradas salidas, vias, costumbres, servidumbres, maderas, montes, pastos, aguas, aguajes, abrevaderos y demas que les correspondan, con la precisa calidad y terminante condicion de que han de mantener poblados y amparados dichos terrenos sin que esten despoblados, desiertos ni desamparados por tiempo alguno, bajo el apercibimiento de que si se varificase su total abandono por espacio de tres años consecutivos, y hubiere algun persona que los denunciare, en tal evento, con previa classificacion del hecho, se declararan por baldios y se adjudicaran á favor de mejor

Sello cuarto	{	Estado	{	Una cuartilla
Para los anos de mil		Libre de		Ochocientos treinta y
Cinco y ochocientos		Sonora		Trienta y sies

pastor, exceptadose como es justo aquellos casos en que el desamparo sea por causa de notoria invasion de enemigos, y solo por el periodo de semejante acontecimientos previnendose como estrechamente se previene a los cuidadanos Juan, Rafael é Ygnacio Elias Gonzales y a sus hijos, herederos, y sucesores que habram de sujec-

232 tarse y limitarse al terreno, pertenencias terminos y linderos senalados individualmente en las preinsertas diligencias de medidas observando y dando su esacto cumplimiento al articulo 63 Capitulo 96 de la ley organica de hacienda num6 26 de 11 de Julio de 1834, que les impone la obligacion de mantener en sus terminos linderos mojoneras de cal y canto bajo la multa de veinte y cinco pesos que se les esijirá si contravinieyen, para los fondos del comun construyendose en este caso por el respectivo Juez las espresadas mojoneras de cuenta de los interesados, y ordeno y mando a los Jueces a los Jueces justicias y autoridades que al presente son y en adelante fueron del partido de Arizpe que en obsequio de la buena y pronta administracion de justicia que en cumplimiento de las leyes de la materia no permitan que los referidos interesados ni sus herederos sean de ninguna manera perturbados, inquietados ni molestados en el libre uso, ejercicio, propiedad, dominio y posesion de los mencionados dies y ocho sitios doce y media caballerias de tierra que comprenden los puestos nombrados Agua prieta Naidenibacachi, y Santa Barbara antes si zelaran y cuidaron constantemente con la mayor vigilancia y actividad que sean amparados siempre y mantenidos en la quieta y pacifica posesion que les corresponde con legitimo derecho, para que de este modo puedan libremente vender, cambiar, permutar, donar, traspasar, ceder y enagenar dichas tierras á su arbitrio y libre eleccion como dueños propietarios absolutas—En cuyos terminos espedi el presente titula de merced en forma á favor de los ciudadanos Juan, Rafael é Ygnacio Elias Gonzales, y a sus hijos, herederos y susesores entregandoseles para su resguardo con previa toma de razon en el correspondiente libro, Dado en la Capital de Arizpe á los veinte y ocho dias del mes de Diciembre de mil ochocientos treinta y sies, autorizado y firmado por mi, y sellado con el sello de esta Tesoreria general, por auto los infrascritos testigos de mi asistencia, á falta de escribano que no le hay segun derecho—Enmendado—diligencias—6—6—c—o—o—6—puso—vale—Tachado—s—no—vale—

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JOSE MARIA MENDOZA.

[Senor Tesoreria Gen'l. Eagle.]

Asa: AGUSTINE SERRANO.

Asa: JULIAN PADILLA.

queda tomada razon de este titulo á fojas 41 vuelta del correspondiente libro que esiste en al archivo de esta Tesoreria general.

Sello cuarto { Estado } Una cuartilla
 Para los años de mil { Libre de } Ochocientos treinta y
 Cinco y ochocientos { Sonora } Trienta y seis.

De Oficio

Jose Maria Mendoza, Tesorero General del Departamento de Sonora

Certifico que al folio—del libro manual del corriente año
 economico se.....

halla sentada una partida del tenor siguiente—Diciembre
 28 Cargo en titulo de merced# treinta pesos entrados por
 el ciudadano Rafael Elias por sí y á nombre de sus her-
 manoss Ber. D. Juan y D. Ygnacio Elias Gonzales por el
 valor del titulo de merced que con esta fecha les ha espe-
 dido esta Tesoreria general de diez y ocho sitios doce y
 media caballeris.....

de tierra para cria de ganado y caballada que comprenden
 los puntos nombrados Agua prieta, Naidenibacachi y
 Santa Barbara sitos en jurisdiccion del Presidio de Fron-
 teras en el partido de esta capital..... 030,0,0

MENDOZA.

RAFAEL ELIAS.

Y para que conste donde convenga doy la presente en Arizpe a
 veinte y ocho de Diciembre de mil ochocientos treinta y seis.

JOSE MARIA MENDOZA.

234 Sello cuarto { Estado } Una caurtilla
 Para los años de mil { Libre de } Ochocientos treinta y
 Cinco y ochocientos. { Sonora } Trienta y seis.

De Oficio

Noticia de los derechos causados por los ciudadanos Juan, Rafael é
 Ygnacio Elias Gonzales en la adjudiccion y expedicion del titulo
 de diez y ocho sitios y doce y media caballerias de tierra que com-
 prenden los puestos nombrados Naidenibacachi, Agua Prieta y
 Santa Barbara.

	a Saver.
Par valor principal del terreno.....	" 432,4,0
Por los derechos de Almonedas.....	" 006,0,0
Por el Promotor Fiscal.....	" 003,0,0
Por el tambor Pregonero.....	" 002,0,0
Por tres pliegos papel 3, agregado al espediente.....	" 001,4,0
Por el titulo de Merced.....	" 030,0,0
Por un pliego papel sello 2 "y nueve de 4" invertidos en el titulo.....	" 002,0,6
Suma.....	\$477,0,6

JOSE MARIA MENDOZA.

Filed April 25th, 1867, at 5 o'clock p. m., by the hands of Camou.
Recorded May 1st, 1867, at 9 o'clock p. m.

JOHN H. ARCHIBALD, *Recorder.*

TERRITORY OF ARIZONA, }
County of Pima, } ss :

I, Chas. A. Shibell, county recorder in and for the county of Pima, do hereby certify that the above and foregoing is a full, true, and correct copy of a deed or transfer of land from Jose Maria Mendoza, treasurer of the State of Sonora, Mexico, to Juan, Rafael, & Ygnacio Gonzales, dated 28th of December, 1836, as appears of record now in my office in Book No. 1, Deeds of Real Estate, pages 125 & fol.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in Tucson, this 27th day of Feb'y, A. D. 1893.

[Seal of Recorder Pima County, Arizona Territory.]

CHAS. A. SHIBELL,

County Recorder.

(Endorsed :) (Copy of original expediente.) Filed in the office of the clerk, court of private land claims, Feb. 28, 1893. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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PLAINTIFF'- EXHIBIT F.

Title papers of eighteen sitios and twelve and one-half caballerias of land for raising cattle and horses, comprised in the places called Naydenibacachi, Agua Prieta and Santa Barbara, situate in the jurisdiction of the presidio of Fronteros, issued by the general treasury department of Sonora, in favor of the citizens, Juan, Rafael and Ygnacio Elias Gonzales of this place.

Second seal { Free } for the years
one and a half dollars { State of } 1833 and 1834
Sonora }

Habilitated by the department of Sonora for the biannual of 1835 and 1836.

Jose Maria Mendosa, treasurer general of the department of Sonora :

Inasmuch as article 11 of the supreme decree number 70 of the general congress, dated August the 4th of 1824, concedes to the States the rents which by said law are not reserved to itself, and one of them being that of the lands within their respective limits, which in consequence belong to them ; for the disposition of which the honorable congress of the once united Sonora and Sinaloa, passed the law number 30 of May 20 of 1825, as well as other decrees relative thereto of other successive legislatures ; whose dispositions are contained in sections 3d, 4th, 5th, and 7th of chapter 9th of the organic law of the treasury number 26 of July 11th of 1834, and

the citizens Juan, Rafael and Ygnacio Elias Gonzales having presented themselves before this treasury general by petition of July 21st, 1831, taking up the waters and lands of Santa Barbara, Naidenibacachi, Agua Prieta and Cobuyona, this treasury by
 236 decree of August 12th of the same year ordered an investigation to enquire if the petitioners have the number of cattle (property) they pretend, if really the property (lands) they have is not sufficient to support said (cattle) property in the sitios they own on the San Pedro and Cienega de Heredias, if therefore they really are in need of the lands petitioned for, and if these are outside of the limits of the presidio. The alcalde of the city made the investigation aforesaid, and resulting therefrom in conformity with what is asked by the interested parties, by the decree of October 10th of said year,

Fourth seal { Free
 { State of
 { Sonora } one quarter shilling

eighteen hundred and thirty-five and eighteen hundred — thirty-six

there was issued a full commission to the citizen Joaquin Vicente Elias, who executed it as appears from the writing and act of obedience that follows.

Honorable treasurer general of the State:

The citizens Juan, Rafael and Ygnacio Elias Gonzales, before you, appear by the present petition saying, that in the lands of San Pedro and Cienega de Heredias belonging to them, in the jurisdiction of the presidio of Santa Cruz, they have cattle and sheep herds whose numbers they cannot possibly feed in the sitios belonging to
 237 them, as is a notorious and public fact.—For this reason their cattle wander away to the four cardinal points of the compass, but more particularly towards the waters of the Santa Barbara, Naidenibacachi, Agua Prieta and Coabuyona, by which they suffer incalculable damages, because as they are public lands, everybody who wishes enters freely into them, run and act as he pleases without our consent or permit, from which follow insults, robberies and the scattering of the cattle more and more.

To prevent such damages and evils, and that the lands of our stock country may be sufficient for the quantity of cattle we now have and which must increase approximately in spite of the continuous damages caused by the Indians, war enemies, we are obliged to make the legal petition, as we do, for the lands that may be found to be public lands within the places and springs aforesaid, which are bounded on the north by the Chiricahua mountains, on the south by the lands of the Sinaloas, on the east by the mountains of Coaguivona and on the west by the lands of Ians. Wherefore we ask and pray you, that in conformity to the law of May 20 of 1825 and the power conceded to you by article 22, to accept our petition for the said lands, and to issue the proper decree for the measurement, valuation, posting and sale, and that other proper proceedings

may be executed up to the issuing of the patent title, offering to pay the dues, costs and all necessaries, &c.

Arispe, July 21 of 1831.

JUAN ELIAS GONZALES.
RAFAEL ELIAS.
YGNACIO ELIAS.

238 Hermosillo 10 of October 1831.—Inasmuch as the foregoing information legally and sufficiently proves that the citizens Juan, Rafael and Ygnacio Elias Gonzales have a great abundance of cattle which overcrowd the sitios they own at the place of

Fourth seal { Free
State of } a quarter shilling
Sonora }

for the years 1835-'36

San Pedro and Cienega de Heredias in the jurisdiction of the presidio of Santa Cruz, and that for this reason they need very much the public lands which they ask for, named Santa Barbara, Naidenibacachi, Agua Prieta and Coagayona, full commission is forthwith given in due form, to the citizen Joaquin Vicente Elias, resident of San Ygnacio, so that without damage to third parties who may have better right, having first summoned adjacent owners, he may proceed to take the legal steps, to survey the said public lands, effecting the measurement, appraisement and posting as is provided in the sovereign (seal) decree of the constituent Congress of the United States, that was, No. 30 of May 20, 1825, and its proper regulations, and also as it is provided in the decree number 175 of November 20, 1830, and other determinations and regulations extant on the subject, and said proceedings having been executed, he should send the originals to this treasury, summoning the interested parties to appear in person or by attorney at the auction of the said lands which must take place in an auction sale in this city.

239 The general treasurer of the State so ordered it and signed it with assistant witnesses, in default of notary there being none, according to law.

MENDOZA.

Assistant :

YGNACIO ESCOBOSA.

Assistant :

MARIANO ROMERO.

The foregoing commission conferred on me by the hon. treasurer general, for the survey of the lands petitioned for by the citizens Juan, Rafael and Ygnacio Elias Gonzales, for the places called Santa Barbara, Naidenibacachi, Agua Prieta and Coaguyona, and while I accept of it, let it be postponed till the inroads of the Indian barbarians diminish.

In witness whereof I note it and sign it with my assistants according to law.

JOAQ. V. ELIAS.

Ass.: BRIGIDO REYES.

Ass.: MIGUEL CAMPOY.

With date of August 20th, 1835, the acting commissioner proceeded to the survey of the lands aforesaid, because the Indian enemies allowed it, having suspended their hostilities; he made summons of the adjacent owners, and appointed the official chainmen, tallymen and recorders, the citizens Juan Eufracio de la Cruz Juan Samaniego, Eugenio Moreno, Julian Sillas, Pedro Luego and Manuel Samaniego; whom he swore and they promised to perform faithfully and legally their charge, and forthwith he made the survey as appears from the following proceedings.

At the place of Agua Prieta, on the twenty-eight day of 240 September of eighteen hundred and thirty-five, I, the judge commissioner to carry out these proceedings so as to begin the survey, delivered to the appointed officials, a regulation cord, well waxed, and a vara measure, and I caused in my presence and in that of

Fourth seal { Free }
 { State of } a quarter shilling
 { Sonora }

for the years eighteen hundred and thirty five and six

my assistants, that they should carefully measure fifty varas, which they did; I ordered the extremes to be tied to two poles, which were delivered to the chainmen; and having asked of the attorneys of Messrs. Elias to point out the place they wanted as center, he did so, fixing a lagoon or pool that is in the middle of a valley called by the same name as the place, and the center of all the circumference; forthwith, the southern direction was taken, and towards it was measured and carefully counted fifty-nine cords, which ended at a clump of willow trees which are situated in the middle of the valley, which

Fourth seal { Free }
 { State of } a quarter shilling
 { Sonora }

for the year- eighteen hundred and thirty five and six

which shall serve as a monument, while the parties erect them of masonry as is provided by law. Returning to the center, the direction of the north was taken, and going up the valley there were measured one hundred cords, which ended on a very small 241 hill, fronting towards the east with the pass called "La Silla," having ordered a heap of stones to be placed there and a cross as a monument. Returning to the center the direction of the east was taken, and towards it were measured and counted one hundred and sixty-eight cords which ended on a high hill which is found on the right of the pass through which passes the old road from Santa

Cruz to San Bernardino where I ordered placed a heap of stones and a cross as a monument.

Returning to the center, the direction of the west was taken and towards it were measured and counted two hundred and forty cords which ended a little beyond where the little mountains seen in the said direction subside (or end), on a long sloping red hill that has a ledge towards the south, and fronting in the same direction with the highest point of the San José mountain, where I ordered placed a heap of stones and a cross as monument, and it being night, I suspended the survey to continue it tomorrow, and in witness whereof, I noted it in the proceedings which I signed with my assistants according to law, as the other officials do not know how to write, which I attest.

JOAQUIN VICENTE ELIAS.

Ass.: JOSE PERFECTO FLOYOS.

Ass.: LEONARDO LUGUE.

At the place of Agua Prieta, on the twenty-ninth day of September, 1835, I, the judge commissioner, in order to continue these surveys, went with the appointed officers to the northern monument, and having taken the direction of the east, there were measured and counted toward it one hundred and sixty-eight cords, which ended near the Silla pass on a small hill that is to the right and near two larger ones, where I ordered placed a heap of stones and a cross as a monument; returning to the northern monument, from where we had begun

Fourth seal { Free State
 of
 Sonora } a quarter shilling

for the years eighteen hundred and thirty five and six

the measurement, and the direction of the west having been taken there were measured and counted towards it two hundred and forty cords, which ended on a small hill which is in front of the cross monument in said direction, where another monument was placed and a cross; from here, taking the direction of the south there were measured and counted towards it eighty-nine cords, which ended on the cross monument of the west, and continuing in the said southern direction, there were measured sixty cords, which ended at the foot of a high hill, fronting towards the south with another hill that has a black crest (cresta) and towards the east with a pass

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 of
 Sonora } one quarter shilling

for the years eighteen hundred and thirty five and six

which has to the left two hill- formed by some red ledges; where I ordered placed a heap of stones and a cross as a monument; from

243 this place, taking the eastern direction, there were measured and counted two hundred and forty cords, which ended at the cross monument of the south in the clump of willow trees spoken of before; from thence, there were calculated one hundred and seventy-eight cords towards the east, to the slopes of the first pass which is to the right of the point where ended the cross monument of the same direction, both points lying in a straight line along the foot of the Perrillo mountains; and from thence, in the direction of the north, there were calculated fifty-nine cords, which ended at the cross monument of the east. The survey being thus concluded, the calculation carefully made resulted in six short sitios. The interested party having been informed thereof, he was satisfied with the proceedings and he opportunely notified his principals to have monuments constructed of mortar and stone as is provided, and I put it in this proceeding which I signed with those of my assistance according to law, as the other officials accompanying me do not know how to write.

JOAQUIN V. ELIAS.

Ass.: JOSE PERFECTO FLOYOS.

Ass.: LEONARDO LUQUE.

The subscriber taking his stand on the place pointed out by the attorney of Messrs. Elias, in order to proceed to the survey of the lands of Santa Barbara and Naidenibacachi, the said attorney having been requested to designate the center point, and having done so on the center between the two places named, a little way nearer to the east on a hill, the direction of the north was taken and 244 towards it were measured and counted one hundred and sixty-five cords which ended a little beyond the spring of Naidenibacachi on a little hill pointing towards the north on the right with three high hills and one towards the east and bearing towards the south, fronting an ash forest. Returning to the center, the direction of the south was taken, and towards it were measured and counted two hundred and fifty-eight cords which ended at the end of a mountain spur at the distance of three cords

Fourth seal $\left\{ \begin{array}{l} \text{Free} \\ \text{State of } of \\ \text{Sonora} \end{array} \right\}$ one quarter shilling

for the year eighteen hundred and thirty five and six

towards the east, on the same line with the corner monument of the lands of the spring of Boltazan, the Gato and co forth,—grantee to Mr. Jose Rafael Elias, his son Mr. Jose Juan and his wife Mrs. Guadalupe Perez, where I ordered placed a heap of stones and a cross as a monument. Returning to the center the direction of the west was taken, and towards it were measured and counted two hundred cords which ended a little higher up beyond the place called Santa Barbara, on the other side of the creek on a white mountain that is near a mountain peak towards the north, and towards the south, in a straight line with the Magallanes mountain a good distance off, where

Fourth seal $\left\{ \begin{array}{l} \text{Free} \\ \text{State of} \\ \text{Sonora} \end{array} \right\}$ one quarter shilling

for the years eighteen hundred and thirty five and six

245 I ordered placed a heap of stones and the mark of a cross as monument. Returning to the center, the direction of the east was taken, and there were measured sixty-three cords, which ended on the other side of a large low valley on a little hill, that is near to a rocky gulch and fronting the mountains of Neidenibacachi, and to a white ledge on the top of said mountains; and night having already set in for this day, I ordered the suspension of the survey which I am making to continue it tomorrow as to squaring it. In witness whereof, I make note of it which I signed with my assistants according to law, as those in my company do not know how.

JOAQUIN V. ELIAS.

Ass.: JOSE PERFECTO FLOYOS.

Ass.: LEONARDO LUQUE.

At the center point of the lands now being surveyed, on the thirtieth day of the month of September, 1835, the commissioner appointed to make this survey ordered the continuation of it, in order to square the former measurements, and to that end he proceeded to the northern monument, and being located on it he ordered the direction of the east to be taken, and thereon were measured and counted fifty-three cords which ended in a low valley at the foot of a "jazcate," the only one in all that locality, and fronting some mountains having some red ledges, and on the same line with the squaring measurement of the corner monument of the west of Agua Prieta, distant from this thirty-three cords to the south, where

I ordered placed a heap of stones and a cross as a monument.

246 Returning to the cross monument of the north where this measurement was begun, the direction of the west was taken, and thereon were measured and counted one hundred and thirteen cords which ended on a transverse mountain spur well wooded that fronts to the south with a peak, and towards the north with a rocky gulch, where I ordered placed, a heap of stones and a cross as a monument. From here the measurement was continued towards the west, and there were measured and counted two hundred and fifty cords which ended on the cross-monument in this direction. Taking the direction of the south, there were calculated

Fourth seal $\left\{ \begin{array}{l} \text{Free} \\ \text{State of} \\ \text{Sonora} \end{array} \right\}$ one quarter shilling

for the years eighteen hundred and thirty five and six

up to the foot of the mountain of Magallenes, which is the cross monument of the west of the lands of the springs of Gato, Baltazar, Tomas Romero &c., surveyed in favor of Mr. Jose Rafael, Elias, his son, Mr. Jose Juan, and his wife, Mrs. Guadalupe Perez. From the

aforesaid point the direction of the east was taken and thereon were calculated two hundred cords to the cross monument of the south. From here the measurement was continued in the same direction of the east, for seventy-three cords, which ended at the first stopping place of the compañeros on a bare table-land and fronting towards the north, with the last clump of cottonwood trees, the largest to be found in the valley of

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Fourth seal $\left\{ \begin{array}{l} \text{Free} \\ \text{State of} \\ \text{Sonora} \end{array} \right\}$ one quarter shilling

for the years eighteen hundred and thirty five and six

Santa Barbara on the creek of hollow waters: The direction of the north having been taken, being a thickly wooded country, there were calculated up to the cross monument of the east, two hundred and fifty-eight cords, which ended on the same, and from this in the same direction, and for the reasons already expressed, there were calculated one hundred cords up to the corner monument of the lands of Agua Prieta, this survey being in this manner finished, comprising in this last survey which composes the lands of Neidenibacachi and Santa Barbara, eleven and one-half sitios and twelve and one-half caballerios. All of which is herein set down in the proceeding which I sign with my assistants according to law, the rest of the officers who accompany me not doing so because they do not know how.

I attest:

JOAQUIN VICENTE ELIAS.

Ass.: JOSE PERFECTO FLOYOS.

Ass.: LEONARDO LUQUE.

With date of October 1st the surveyor, through intelligent experts and of practical experience, to wit, the citizens Jose Maria Luque and Julian Sillas, to appraise the surveyed lands, were duly sworn and well posted as to the organic law of the treasury, they appraised the eighteen and a half sitios of land in the sum of four hundred and thirty-two dollars and fifty cents. At such appraisement he

248 put them up for sale for thirty consecutive days asking for bidders from June 4th up to July 4th of the present year. There was no bidder.

The proceeding being finished with date of the 7th of the same month he forwarded it to the treasury, which by decree of September 9th forwarded it to the solicitor of the treasury, who submitted the following opinion:

Hon. treasurer general:

This process which has been submitted to my consideration, as the solicitor of the treasury, was ordered by Your Excellency in consequence of a petition presented to the treasury general on July 21st, 1831, by the citizens Juan, Rafael and Ygnacio Elias Gonzales of this vicinity, in which they ask to have granted to them the public lands to be found at the places called Santa Barbara, Neidenibacachi,

Agua Prieta and Coaguyona, lying to the north of the presidio of Fronteros, because the lands they now occupy are not sufficient to support in them the amount of cattle belonging to them. Wherefore, by decree of October 10th of the said year, Your Excellency issued a full commission to the citizen Joaquin Vicente Elias, resident of San Ygnacio, and today secretary of the supreme government of the department, to execute with all the requisites of law the survey, appraisal and make

Fourth seal $\left\{ \begin{array}{l} \text{Free} \\ \text{State of} \\ \text{Sonora} \end{array} \right\}$ one quarter shilling

for the years eighteen hundred and thirty five and six

249 publication of the said lands in favor of the above-mentioned Messrs. Elias.

In virtue thereof the survey having been made of the said public lands, there resulted eighteen sitios, twelve and a half caballerias for raising cattle and horses, which were appraised and adjudicated in the following way : Six and a half sitios which compose the survey of Agua Prieta, one of them valued at sixty dollars as it has a small spring, and the remaining five and a half at the rate of fifteen dollars each, as they are absolutely dry, and the eleven and a half sitios and twelve and one-half caballerias composing the lands of Neidenibacachi and Santa Barbara, one at eighty dollars, another at sixty and the rest at fifteen dollars, which sums make a total of four hundred and thirty-two dollars and fifty cents.

He who answers says that the appraisements made by the appointed experts being in conformity with the provisions of the organic law of the treasury number 26 of 11th of July of 1834, there is no obstacle to prevent the treasury from ordering the public auction by the board, and to issue the proper title to transfer in favor of the interested parties or of the highest bidder. This is the opinion of the solicitor of the treasury in compliance with his duty. Nevertheless, Your Excellency may do whatever is best.

Arispe, September 12, 1836.

PEDRO RODRIGUEZ.

250 The treasury general being satisfied with the foregoing solicitor's opinion, by decree of September 15th of the present year made order to proceed to the three public auctions on the same day and on the 16th and 17th, and there being no bidder the eighteen sitios and twelve and a half caballerias of land of the places called Santa Barbara, Neidenibacachi, Agua Prieta and Coaguyona were auctioned off to the citizens Juan, Rafael and Ygnacio Elias Gonzales, as appears by the third auction as follows :

In the capital of Arispe, on the seventeenth day of September, 1836, the board of auction being called at the office of the treasury general of the department, the president and members of the board who accompanied him, citizens, treasurer, Jose Juan Milla, judge of 1st instance according to law, Julian Padilla, solicitor of the treas-

ury, Pedro Rodriguez Guzman, the 3rd and last auction was started for the sale of the eighteen sitios and twelve and a half caballerias of land contained in the place known by the names of Agua Prieta, Neidenibacachi and Santa Barbara, calling out in the same terms and with proper solemnities as in the two former occasions, crying out to the public three times that now the sale must take place, at which juncture the citizen Rafael Elias presented himself offering for himself and in the name of his copartners and brothers Juan and Ygnacio

251 Elias Gonzales, the said four hundred and thirty-two dollars and fifty cents at which were appraised the lands—and it being the hour of twelve o'clock, prayer-time of this day, without appearing any other better bidder, the crier said at last in high and clear voice, "One, two, three; let it be sold, let it be sold, let it be sold; may it do good to the said Rafael, Juan and Ygnacio Elias Gonzales." In such terms this proceeding was concluded.

Fourth seal { Free State
 of
 Sonora } one-quarter shilling

for the years eighteen hundred and thirty five and six there being publicly and solemnly sold at auction in favor of these interested parties the aforesaid eighteen sitios and twelve and one-half caballerias of land which are comprised in the said places of Agua Prieta, Neidenibacachi and Santa Barbara, situated in the jurisdiction of the presidio of Fronteros, for the said amount of four hundred and thirty-two dollars and fifty cents, in which were appraised said lands and in witness whereof this entry was made which was signed by the president and members of the board of auctions with the said Mr. Rafael Elias—Milla—Padilla—Rodriguez—Rafael Elias. On the same day it was ordered that the party Rafael Elias, for himself and in the name of his other copartners should proceed to pay into the treasury the four hundred and thirty-two dollars and fifty cents, value of the land, and having done so, the

252 proper certificate was issued which proves it and is of the following tenor:

Jose Maria Mendoza, treasurer general of the department of Sonora.

I certify that on page — of the journal of the present fiscal year there is an entry of the following tenor:

December 26.—Charge for sale of lands, four hundred and thirty-two dollars and fifty cents paid by the citizen Rafael Elias for himself and in the name of his brothers Mr. Juan and Mr. Ygnacio Elias Gonzales for the price for which they were sold at public auction of this treasury on September 17th last, eighteen sitios and twelve and a half caballerias of land for the raising of cattle and horses, contained in the places named Agua Prieta, Neidenibacachi, Santa Barbara, situated in the jurisdiction of the presidio of Fronteros in the district of the capital, and of this payment the proper certificate was issued, which will be joined to the general expediente in proof thereof.

8432.4r.

MENDOZA.
RAFAEL ELIAS.

In witness whereof I give the present at Arispe on the twenty-sixth of December of eighteen hundred and thirty-six.

JOSE MARIA MENDOZA.

The original certificate having been joined to the expediente on the subject-matter, this was concluded with all the requisites and formalities established by the laws remaining in the custody in the archives of the treasurer general as a perpetual testimony.

253 Wherefore, using the faculties conceded to me by the laws, by these presents and in the name of the Mexican Republic, I grant in due form of law, eighteen sitios and twelve and one-half caballerias of land for raising cattle and horses, comprised in the places named Agua Prieta, Neidenibacachi and Santa Barbara, situate in the jurisdiction of the presidio of Fronteros in the district of this capital, in favor of the citizens Juan, Rafael and Ygnacio

Fourth seal { Free State
 of
 Sonora } quarter shilling

for the years eighteen hundred and thirty five and six

Elias Gonzales to their heirs and successors, to whom I grant, give and adjudicate said lands by way of sale, and with the qualities, firmness, and subsistency established by the laws with all the ingresses and egresses, ways, customs, servitudes, woods, mountains, pastures, waters, springs, tanks and all else belonging thereto, with the precise quality and fixed condition that they must keep the said lands occupied without being abandoned, deserted nor unprotected for any time, with the understanding that if an entire abandonment should take place for the term of three years consecutively, and there should be any person that should petition for them, in such an event, with a prior proof of that fact, they will be declared public lands and they will be granted in favor of the highest

254 Fourth seal { Free State
 of
 Sonora } quarter shilling

for the years eighteen hundred and thirty five and six

bidder, excepting, as is just those cases in which the abandonment is on account of the notorious invasion of the enemy, and only for the period of such happening, admonishing, as it is strictly provided, the citizens Juan, Rafael and Ygnacio Elias Gonzales, and their children, heirs and successors, that they must confine themselves to the boundaries of the land, -pertenencias, limits and bounds marked distinctly in the foregoing proceedings of survey, observing and keeping exact compliance with article 63, chapter 90 of the organic law of the treasury number 26, of 11th of July, 1834, which obliges the owners to keep boundary monuments of stone and mortar under the penalty of twenty-five dollars, which will be imposed if not fulfilled for the public fund, the monuments to be constructed in this

case by the proper judge at the cost of the interested parties, and I order and command, the judges, justices and authorities now existing and which may exist hereafter in the district of Arispe, that in obedience to the good and prompt administration of justice, in compliance with the laws on the subject, they shall not permit the said grantees nor their heirs to be in any way disturbed, disquieted or molested in the free use, exercise, property, dominion and possession of

the said eighteen sitios twelve and a half caballerios of land, 255 comprised in the places called Agua Prieta, Neidenibacachi, Santa Barbara, on the contrary, they must watch and take care constantly with the greatest vigilance and activity that they be always protected and maintained in the quiet and pacific possession belonging to them by legal right, so that in this manner they may freely sell, change, exchange, give, transfer, cede and mortgage said lands at their will and free election as absolute owners in fee.

In these terms I issued the present title of sale in due form in favor of the citizens Juan, Rafael, and Ygnacio Elias Gonzales, and to their children, heirs, and successors, delivering it to them for their protection, having previously taken note of it in the proper book.

Given at the capital of Arispe on the twenty-eighth day of the month of December, 1836, authorized and signed by me, and sealed with the seal of the treasury general, before the subscribing witnesses of my assistance, in default of clerks, according to law.

Corrections: The words "diligencias and Puso" remain, but what is crossed out is inoperative.

JOSE MARIA MENDOZA.

[Seal of Treasury. Eagle.]

Ass.: AGUSTIN SERRANO.

Ass.: JULIAN PADILLA.

Note of this title taken on page 41, and on the other side of 256 it on the proper book, found in the archives of this treasurer general.

Fourth seal { Free State
 of
 Sonora } quarter shilling

for the years eighteen hundred and thirty five and six

Jose Maria Mendosa, treasurer general of the department of Sonora.

I certify that on folio — of the journal of the present fiscal year is found entered the following notation:

December 28.—Charge for title granted, thirty dollars paid by the citizen Rafael Elias, for himself and in the name of his brothers, Mr. Juan and Ygnacio Elias Gonzales, for the fee of issuing title grant, which with this date was issued by this treasury general, of eighteen sitios, twelve and a half caballerios of land for raising cattle and horses, comprised in the places named, Agua Prieta, Neideni-

bacachi, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteros in the district of this capital.

\$30.00.

MENDOZA.
RAFAEL ELIAS.

In witness whereof I give the present certificate at Arispe on the twenty-eighth of December, 1836.

JOSE MARIA MENDOZA.

Fourth seal { Free State
 of
 Sonora } quarter shilling

for the years eighteen hundred and thirty five and six

257 Note of the dues paid by the citizens Juan, Rafael and Ygnacio Elias Gonzales in the adjudication of the title of eighteen sitios twelve and a half caballerias of land comprised in the places named Neidenibacachi, Agua Prieta and Santa Barbara, to wit:

For the price of the land.....	432.4 reales.
For the fee of auction.....	6.0
For the solicitor of the treasury.....	3.0
For the drum-beater.....	2.0
	4
For three leaves stamp paper 3—added	1.0
For issuing title.....	30.0
For a leaf of paper of the second and nine of the fourth class paper used in the title.....	2.0
Total	\$477.0

Z
JOSE MARIA MENDOSA.

Filed April 25th, 1867, at 5 o'clock p. m., by the hand of Camou.
Recorded May 1st, 1877, at 9 o'clock p. m.

JOHN H. ARCHIBALD, *Recorder.*

(Endorsed :) (C. No. 5, F. 3.) Translation of expediente, Agua Prieta grant. Filed in the office of the clerk, court of private land claims, Feb. 28, 1893. Jas. H. Reeder, clerk, by R. L. Long, deputy.

258 PLAINTIFF'S EXHIBIT G.

This indenture, made the 24th day of December, in the year of our Lord one thousand eight hundred and eighty-six, between Santiago Ainsa, of Pima county, Arizona Territory and Jose Ma. Elias and Manuel Elias, of the State of Sonora, Republic of Mexico, parties of the first part and S. M. Franklin of said Pima county, Territory of Arizona, party of the second part witnesseth: That the said parties of the first part for and in consideration of the sum of

six hundred $\frac{90}{100}$ (\$600.00) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all their right, title and interest in and to all lands and real property, owned by them or either of them situate and being in the counties of Pima and Cochise, or in either of said counties, in the Territory of Arizona, United States of America, and all estates and interests therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

SANTIAGO AINSA. [SEAL.]
JOSE MA. ELIAS. [SEAL.]
MANUEL ELIAS. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. F. ROGERS.

259 TERRITORY OF ARIZONA, } ss:
County of Cochise, }

On this 24th day of December, 1886, personally appeared before me, Joseph S. Mills, justice of the peace, at Fairbank, Cochise county, in and for the said county of Cochise, Santiago Ainsa, Jose Ma. Elias, and Manuel Elias, known to me to be the persons described in and who executed the foregoing instrument, and who acknowledged to me that they and each of them executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

JOSEPH S. MILLS,
Justice of the Peace, Township No. 1, Cochise Co., A. T.

(Endorsed :) Recorded at the request of Wells Fargo's Ex. Dated December 27th, 1886, at 10 minutes past 11 o'clock a. m., in Book 9 of Deeds, page 148, records of the county of Cochise, A. T. A. F. Jones, county recorder, by W. F. Bradley, deputy recorder.

(Endorsed :) Territory of Arizona, county of Pima, ss: I herewith certify that the within instrument was filed and recorded at the request of Jeffords and Franklin, 13th October, A. D. 1888, at 1.15 p. m., in Book 15 Deeds of Real Estate, at pages 266 & 267. Witness my hand and official seal the day and year aforesaid. A. B. Sampson, county recorder. (Seal.)

260 [Endorsed:] No. 5, F. 8. Santiago Ainsa *et al.* to S. M. Franklin. Deed, dated Dec. 24, 1886. Ainsa, adm'r, etc., *vs.* U. S. *et al.* Agua Prieta grant. Filed Jan. 25, 1894.

261 PLAINTIFF'S EXHIBIT H.

This indenture, made the third day of January in the year of our Lord one thousand eight hundred and eighty-seven between S. M. Franklin of the city of Tucson, county of Pima, Territory of Arizona, party of the first part and Robert C. Ely of Carrollton, Carroll county, State of Missouri, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar (and other good and valuable considerations) lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all his right, title and interest in and to all the lands and real property situate and being in the counties of Pima and Cochise, or in either of said counties, in the Territory of Arizona, and, which were, on the 24th day of December, 1886, conveyed by deed of Santiago Ainsa, Jose Ma. Elias and Manuel Elias, to said party of the first part, which said deed is of record in the office of the county recorder of Cochise county in Book 9 of Deeds page 148, and reference to which is hereby made.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

262 In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

S. M. FRANKLIN. [SEAL.]

Signed, sealed, and delivered in the presence of—

TERRITORY OF ARIZONA, }
County of Pima, } ss:

On this 26th day of February, in the year one thousand eight hundred and eighty-seven, before me, A. M. Franklin, a notary public in and for said county of Pima, personally appeared S. M. Franklin, personally known to me to be the same person described in and whose name is subscribed to the within instrument and who executed the same, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. M. FRANKLIN,

Notary Public, Pima County, Arizona Territory.

(Endorsed:) Territory of Arizona, county of Pima, ss: I hereby certify that the within instrument was filed and recorded at the request of Jeffords and Franklin, 13 October, A. D. 1888, at 1.15 p. m., in Book 14, Deeds of Real Estate, at pages 722 & 723. Witness my hand and official seal the day and year aforesaid. (Seal.) A. B. Sampson, county recorder.

(Endorsed:) Filed and recorded, at request of S. M. Franklin, March 1st, A. D. 1887, at 10.30 a. m., Book 8, Deeds of Real Estate, pages 571 & 572. W. F. Bradley, county recorder.

263 [Endorsed:] No. 5. S. M. Franklin to Robert C. Ely. F. No. 9. Deed, dated Jan'y 23, 1887. Ainsa, adm'r, etc., et al. U. S. et al. Agua Prieta grant. Jan. 25, 1894. H.

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PLAINTIFF'S EXHIBIT I.

This indenture, made the third day of February, in the year of our Lord one thousand eight hundred and eighty-seven, between Rafael Elias, Carlos Elias and Manuel Elias, of San Pedro, State of Sonora, Republic of Mexico, parties of the first part, and Robert C. Ely of Carrollton, Carroll county, State of Missouri, United States of America party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of one thousand and seventy-one $\frac{15}{100}$ (\$1,071.45) dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain sell and convey unto the said party of the second part, and to his heirs and assigns forever all their right, title and interest in and to that portion of that certain private land claim and Mexican land grant, situate lying and being in the county of Cochise, Territory of Arizona, United States of America and known and called the Rancho Naydenibacachi, Agua Prieta y Santa Barbara, being the same Mexican land grant heretofore and on the 28th day of December 1836, made and granted by the State of Sonora, Republic of Mexico to Juan, Rafael and Ygnacio Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds, pages 125 to 138, both pages inclusive, reference to which said record is hereby made for a more full and complete description; the land embraced within the boundaries of said grant are situated and being partly in the county of Cochise, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, and it is the true intent and meaning of this deed to convey only that portion of said lands embraced within said grant as are situate in the said Territory of Arizona.

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Also all their right, title and interest in and to that certain private land claim and Mexican land grant, situate lying

and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho San Rafael del Valle, being the same Mexican land grant heretofore and on the 25th of December, 1832, made and granted by the State of Sonora, Republic of Mexico to Rafael Elias Gonzales, a copy of the expediente of which grant is of record in the office of the county recorder of Pima county, Territory of Arizona, in Book 1 of Deeds pages 116 to 124, both pages inclusive, reference to which said record is hereby made for a more full and complete description.

Also all their right, title and interest in and to all lands and real property, owned by them or either of them, situate and being in the counties of Pima and Cochise, or in either of said counties, in the Territory of Arizona, United States of America and all estates and interest therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto, the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

RAFAEL ELIAS.	[SEAL.]
CARLOS ELIAS.	[SEAL.]
MANUEL ELIAS.	[SEAL.]

Signed, sealed, and delivered in the presence of—

A. M. FRANKLIN.

266 TERRITORY OF ARIZONA, } ss:
County of Pima.

On this third day of February, 1887, personally appeared before me, A. M. Franklin, a notary public in and for the said county of Pima, Rafael Elias, Carlos Elias, and Manuel Elias, known to me to be the persons described in and who executed the foregoing instrument, and who acknowledged to me that they and each of them and all of them executed the same freely and voluntarily and for the uses and purposes therein mentioned.

I witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. M. FRANKLIN,

[SEAL.]

Notary Public, Pima County, Ariz.

(Endorsed :) Filed and recorded, at request of Wells, Fargo & Co., February 24th, A. D. 1887, at 3.30 p. m., Book 8, Deeds of Real Estate, pages 563, 564, & 565. W. F. Bradley, county recorder.

267 [Endorsed :) No. 5. Rafael Elias *et al.* to Robert C. Ely. F. 10. Deed, dated Feb'y 3, 1887. Ainsa, adm'r, etc., vs. U. S. *et al.* Agua Prieta grant. I. Filed Jan. 25, 1894.

This indenture, made the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-seven, between Plutarco Elias, Alejandro Elias and Dolores Elias, of the city of Guaymas, State of Sonora, Republic of Mexico, parties of the first part, and Robert C. Ely of Carrollton, Carroll county, State of Missouri, United States of America, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand and seventy-one $\frac{45}{100}$ (\$1,071.45) dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever all their right, title and interest in and to that portion of that certain private land claim and Mexican land grant situate lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho Naydenibacachi, Agua Prieta, y Santa Barbara, being the same Mexican land grant heretofore, and on the 28th day of December, 1836, made and granted by the State of Sonora, Republic of Mexico, to Juan, Rafael and Ygnacio Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1, of Deeds, pages 125 to 138, both inclusive, reference to which said record is hereby made for a more full and complete description; that the lands embraced within the boundaries of said grant are situate and being partly in the county of Cochise, Territory of Arizona and partly in the said State of Sonora, Republic of Mexico, and it is the true intent and meaning of this deed to convey only that portion of said lands embraced within said grant as are situate and being in said Territory of Arizona.

269 Also, all their right, title and interest in and to that certain private land claim and Mexican land grant, situate lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho San Rafael del Valle, being the same Mexican land grant heretofore and on the 25th day of December, 1832, made and granted by the State of Sonora, Republic of Mexico, to Rafael Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory in Book 1 of Deeds, pages 116 to 124, both pages inclusive, reference to which said record is hereby made for a more full and complete description.

Also all their right, title and interest in and to all land and real property, owned by them or either of them, situate and being in the counties of Pima and Cochise, or in either of said counties in the Territory of Arizona, United States of America and all estates and interests therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and

the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

DOLORES ELIAS. [SEAL.]
P. ELIAS. [SEAL.]
ALEJ. ELIAS. [SEAL.]

Signed, sealed and delivered in the presence of—

M. C. ROMERO.

NIEVES E. AROSCO.

270 REPUBLIC OF MEXICO, }
State of Sonora, City Guaymas, } ss:

On this eighth day of February, 1887, personally appeared before me, A. Willard, consul of the United States of America at Guaymas, State of Sonora, Republic of Mexico, Plutarco Elias, Alejandro Elias, and Dolores Elias, known me to be the persons described in and who executed the foregoing instrument, and who acknowledged to me that they and each of them executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. WILLARD,
[SEAL.] Consul of the U. S. of America at Guaymas,
State of Sonora, Republic of Mexico.

(Endorsed :) Filed and recorded, at request of Wells, Fargo & Co., February 24th, A. D. 1887, at 3.30 p. m., Book 8, Deeds of Real Estate, pages 565, 566, 567, & 568. W. F. Bradley, county recorder.

271 [Endorsed:] No. 5. Plutarco Elias *et al.* to Robert C. Ely, F 11. Deed, dated Feb'y 8, 1887. Ainsa, adm'r, etc., *vs.* U. S. *et al.* Agua Prieta grant. Filed Jan. 25, 1894.

272 PLAINTIFF'S EXHIBIT K.

This indenture, made the eighth day of Febrerro in the year of our Lord one thousand eight hundred and eighty-seven between Jesus Elias de Maytorena and Jose M. G. Maytorena, her husband, both of Guaymas, State of Sonora, Republic of Mexico, parties of the first part, and Robert C. Ely of Carrollton, Carroll county, State of Missouri, United States of America, party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of three hundred and fifty-seven $1\frac{5}{10}$ (\$357.15) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and

convey unto said party of the second part, and to his heirs and assigns forever, all their right title and interest in and to that portion of that certain private land claim and Mexican land grant situate lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho Neydenibacachi, Agua Prieta y Santa Barbara, being the same Mexican land grant heretofore, and on the 28th day of December, 1836, made and granted by the State of Sonora, Republic of Mexico, to Juan, Rafael and Ygnacio Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1, of Deeds pages 125 to 138 both inclusive reference to which record is hereby made for a more full and complete description; that the lands embraced within the boundaries of said grant are situated and being partly in the county of Cochise, Territory of Arizona and partly in the said State of Sonora, Republic of Mexico, and it is the true intent and meaning of this deed to convey only that portion of said lands embraced within said grant as are situate and being in said Territory of Arizona.

273 Also, all their right, title and interest in and to that certain private land claim and Mexican land grant, situate, lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho San Rafael del Valle, being the same Mexican land grant heretofore and on the 25th day of December, 1832, made and granted by the State of Sonora, Republic of Mexico to Rafael Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds pages 116 to 124, both pages inclusive, reference to which said record is hereby made for a more full and complete description.

Also, all their right, title and interest in and to all lands and real property, owned by them or either of them, situate and being in the counties of Pima or Cochise or in either of said counties in the Territory of Arizona, United States of America and all estates and interests therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

JESUS E. DE MAYTORENA. [SEAL]
J. M. G. MAYTORENA. [SEAL]

Signed, sealed, and delivered in the presence of—
M. C. MORENO.
LEWIS E. AEASTE.

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REPUBLIC OF MEXICO,
State of Sonora, City of Guaymas, } ss:

One this eighth (8) day of February, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, A. Willard, United States consul at Guaymas, Republic of Mexico, Jose M. Maytorena and Jesus Elias de Maytorena, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described to the annexed instrument as parties thereto, who each of them acknowledged to me that they, each of them, respectively executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Jesus Elias Maytorena, wife of the said Jose M. Maytorena, being personally known to me to be the person whose name is subscribed to the annexed instrument as a party thereto, was by me first made acquainted with the contents of the said instrument, and thereupon she acknowledged to me, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office at Guaymas, the day and year in this certificate first above written.

[SEAL.]

A. WILLARD,
United States Consul at Guaymas,
Republic of Mexico.

(Endorsed:) Filed and recorded at request of Wells, Fargo & Co. February 24th, A. D. 1887, at 3.30 p. m., Book 8, Deeds of Real Estate, pages 568, 569, & 570. W. F. Bradley, county recorder.

275 [Endorsed:] No. 5, F. 12. Jesus Elias de Maytorena *et al.* to Robert C. Ely. Deed, dated Feb'y 8, 1887. Ainsa, adm'r, etc., vs. U. S. *et al.* Agua Prieta grant. Filed Jan. 25, 1894.

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PLAINTIFF'S EXHIBIT L.

Know all men by these presents that Robert C. Ely and Clara Ely, his wife, of Carrollton, Carroll county, State of Missouri party of the first part, for and in consideration of the sum of ten dollars, cash in hand to us this day paid by Frank Ely of the city of Saint Louis, State of Missouri, party of the second part, the receipt whereof is hereby acknowledged, and in consideration of the performance by the said party of the second part of certain conditions and trusts to be hereafter set forth and fully stated in a declaration of trust to be made and executed by the said party of the second part, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said party of the second part, an undivided five-forty-eighths interest to himself and his heirs forever of all our right, title and interest of every nature, kind, character and description whatsoever either at law or in equity in

and to all the following-described lands, lying, being and situate in the counties of Pima and Cochise, or in either of said counties, Territory of Arizona, being all of the lands, estate, interests and property acquired by said parties of the first part by direct or mesne conveyances from Santiago Ainsa, Jose Ma. Elias, Manuel Elias, Jesus Elias de Maytorena and Jesus M. Maytorena, Plutarcio Elias, Alexandro Elias, Dolores Elias Rafael Elias, Carlos Elias and Manuel Elias in the year 1887.

And we also have granted, bargained, sold and conveyed and by these presents do hereby grant, bargain, sell and convey unto the said party of the second part all of the balance and residue of our right, title and interest in and to all of the above-described land, as trustee. The said party of the second part as trustee, is to bring and institute and prosecute to final judgment all necessary suits or actions at law or in equity for the purpose of re-
 277 covering all of the said land and property from any and all persons now in possession of said land and property or any part thereof, and to institute and prosecute to final judgment all necessary suits or actions at law or equity as may be required against each and every person whomsoever who may claim or assert any right, title, or interest of any nature of character whatsoever in or to any of the above-described lands or property (except the persons named as the *cestui que trusts* under that certain declaration of trust to be made and executed by the party of the second part, as trustee), and in the event that the said party of the second part, trustee, shall fail, neglect or refuse to make and execute the declaration of trust herein provided for, or shall fail or refuse or for any cause be unable to fully carry out and perform the conditions and provisions set forth in this deed and in the declaration of trust to be made and executed in connection with this deed, then Rochester Ford, of the city of St. Louis, and State of Missouri, may be and is hereby fully authorized to designate in writing some other person to act as trustee in the premises; such other person when so appointed as trustee shall have all rights, power and authority hereby granted and conferred upon the party of the second part as trustee.

To have and to hold an undivided five-forty-eighths interest in and to the above granted and conveyed premises, lands and property unto the said party of the second part, his heirs and assigns forever, and to have and to hold the balance and residue of the above granted and conveyed premises, lands and property unto the said party of the second part as trustee, his successors or assigns forever.

Together with all and singular the improvements, appurtenances, and the hereditaments thereunto belonging or in anywise appertaining, upon the terms and conditions expressed in this in-
 278 this instrument and for the purposes set forth in the declaration of trust herein provided for.

And the said Clara Ely, wife of the said Robert C. Ely, does hereby bar her right of dower to all of the lands, property and premises herein mentioned and described, and by these presents doth relinquish, release, remise and quitclaim unto and in favor of the said

party of the second part, for himself and to him as trustee, all right, claim, title or interest by way of dower or otherwise, which she, the said Clara Ely, may have in or to any of the above-described lands, property and premises.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 30th day of July, in the year of our Lord one thousand eight hundred eighty-seven.

ROBT C. ELY. [SEAL.]
CLARA A. ELY. [SEAL.]

I hereby accept this trust.

FRANK ELY, *Trustee*.

STATE OF MISSOURI, }
County of Carroll, } ss:

On this 30th day of July, in the year one thousand eight hundred and eighty-seven, before me, Jas. F. Tull, a notary public in and for the said county of Carroll, personally appeared before me Robert C. Ely, personally known to me to be the person who is described in and whose name is subscribed to the within instrument, and who executed the same and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Also at the same time and place appeared before me Clara Ely, wife of said Robert C. Ely, known to me to be the person described in and whose name is subscribed to the within instrument, described as a married woman, and upon examination, without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned without fear or compulsion or undue influence of her husband, and that she does not wish to retract such execution.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.]

JAS. F. TULL.

My com. ex. Jan'y 17th, 1891.

279 (Endorsed :) Filed and recorded at request of Wells, Fargo's Express October 25th, A. D. 1887, at 9 a. m., Book 10, Deeds of Real Estate, pages 64, 65, 66, & 67. W. F. Bradley, county recorder.

TERRITORY OF ARIZONA, }
County of Pima, } ss:

I hereby certify that the within instrument was filed and recorded at the request of Jeffords and Franklin 13th October, A. D. 1888, at 1.15 p. m., in Book 14, Deeds of Real Estate, at pages 723 to 726, incl.

Witness my hand and official seal the day and year aforesaid.

A. B. SAMPSON,
County Recorder.

280 [Endorsed:] No. 5. Deed. F. 13. Robert C. Ely & wife to Frank Ely, trustee. Dated July 30, 1887. Ainsa, adm'r, etc., vs. U. S. *et al.* Agua Prieta grant. Filed Jan. 25, 1894.

281

PLAINTIFF'S EXHIBIT M.

This indenture, made the second day of April, in the year of our Lord one thousand eight hundred and eighty-eight, between Angel H. Varela and Elena Varela, both of Magdalena, Sonora, Mexico, the parties of the first part, and Harvey L. Christie of the city of St. Louis, State of Missouri, United States of America the party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of ten dollars, lawful money of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever one undivided half ($\frac{1}{2}$) of all their right, title and interest in and to *that* certain pieces or parcels of land situate in the county of Cochise, Territory of Arizona, United States of America, known as the Rancho "Nuestra Senora del Carmen" being the same lands which were granted by the State of Sonora and Republic of Mexico, to Don Ygnacio Elias Gonzales on the 15th day of November, A. D. 1824, as appears by the title deeds on record in the office of the treasurer general of the State of Sonora.

Also, one undivided half ($\frac{1}{2}$) interest in and to all other lands and estates in lands which the parties of the first part have in the Territory of Arizona, U. S. of America.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

282 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

A. F. VARELA. [SEAL.]
ELENA VARELA. [SEAL.]

Signed, sealed, and delivered in the presence of—
JUAN BOJORQUES.
D. J. CUMMING.

TERRITORY OF ARIZONA, }
County of Pima, } ss:

Before me, D. J. Cumming, a notary public in and for said county of Pima, on this day personally appeared Angel H. Varela and Elena Varela, known to me to be the same persons whose names are subscribed to the annexed instrument, and acknowledged to me that they

executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 3 day of April, A. D. 1888.

[SEAL.]

D. J. CUMMING,
Notary Public.

(Endorsed :) Filed and recorded at request of Wells, Fargo & Co. February 1st, A. D. 1889, at 1 p. m., Book 10, Deeds of Real Estate, pages 331 & 332. (Seal.) W. F. Bradley, county recorder.

283 [Endorsed :] No. 5, F. 14. Angel Varela and Elena Varela to Harvey L. Christie. Deed, dated April 2, 1888. Ainsa, adm'r, etc., vs. U. S. *et al.* Agua Prieta grant. Filed Jan. 25, 1894.

284

PLAINTIFF'S EXHIBIT N.

This indenture, made the 23d day of April, in the year of our Lord one thousand eight hundred and eighty-eight between Jesus E. de Serrano, of Hermosillo, Sonora, Mexico, the party of the first part and Harvey L. Christie of the city of Saint Louis, State of Missouri, United States of America the party of the second part, witnesseth : That the said party of the first part for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bagained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, one undivided half ($\frac{1}{2}$) of all her right, title and interest in and to that certain piece or parcel of land situated in the county of Cochise, Territory of Arizona, United States of America, known as the Rancho Nuestra Senora del Carmen, being the same lands which were granted by the State of Sonora and Republic of Mexico to Don. Ygnacio Elias Gonzales, on the 15th day of November, A. D. 1824, as appears by the title deeds on record in the office of the treasurer general of the State of Sonora: Also one undivided half ($\frac{1}{2}$) interest in and to all other lands and estate in lands which the party of the first part has in the Territory of Arizona, United States of America.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said party of the
285 second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set her hands and seal the day and year first above written.

JESUS E. DE SERRANO. [SEAL.]

Signed, sealed, and delivered in the presence of—

DOLORES SERRANO.

JESUS SERRANO.

REPUBLICA MEXICANA, }
Estado de Sonora, Distrito de Hermosillo, } ss.

Ante mi, Matias Moran, Notario Publico, en el Distrito de Hermosillo, hoy dia vientesiete de Abril de 1888, comparacio la Sra. Jesus E. de Serrano, a quien conosco ser la misma persona, cuyo nombre esta suscrito al calce del antecedente documento, y me declaro que habia otorgado el mismo para los fines y por la consideracion que en el se expresa.

Dado bajo mi firma y sello official el dia 27 de Abril 1888.

[SEAL.]

MATIAS MORAN, E. P.
N.

(Stamped.)

(Endorsed :) Filed and recorded at request of Wells, Fargo Ex. February 1st, A. D. 1889, at 1 p. m., Book 10, Deeds of Real Estate, pages 331 & 332. W. F. Bradley, county recorder.

286 [Endorsed:] No. 5. Jesus E. de Serrano to Harvey S. Christie.

F. 15. Deed, dated April 23, 1888. Ainsa, adm'r, etc., vs. U. S. et al. Agua Prieta grant. Filed Jan. 25, 1894.

287

PLAINTIFF'S EXHIBIT O.

This indenture, made this twenty-fourth day of January in the year of our Lord one thousand eight hundred and ninety-three between Harvey L. Christie and Addie L. Christie, his wife, both of the city of St. Louis, in the State of Missouri, the parties of the first part, and Santiago Ainsa, as trustee, of the city of Tucson, county of Pima, Territory of Arizona, the party of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of ten dollars, and other good and valuable consideration, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part, as trustee, and to his heirs and assigns forever, all those certain lots and parcels of land situate, lying and being in the county of Cochise or in county of Pima, or in either or both said counties in the Territory of Arizona, and bounded and particularly described as follows to wit: all their right, title and interest in the Mexican land grant known and called the Rancho Naydenibacachi, Agua Prieta y Santa Barbara; a copy of the expediente or title to said grant being of record in the office of the county recorder of said Pima county, in Book 1 of Deeds, pages 125 to 138, both inclusive, reference to which said record is hereby made for a more full and complete description.

Also, all their right, title and interest in and to all the lands, estates and premises mentioned and described in those two certain deeds, one dated April 2, 1888, made and executed by Angel N. Varela and Elena Varela unto Harvey L. Christie; the other dated April 23, 1888, made and executed by Jesus E. de Serano unto said Harvey L. Christie, said deeds being of record in the office of the

288 county recorder of said Cochise county in Book 10 of Deeds of Real Estate, on pages 330, 331, 332, reference to which records is hereby made.

Together, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises together with the appurtenances, unto the said party of the second part, as trustee, his heirs and assigns forever, and the said Addie L. Christie, wife of Harvey L. Christie, hereby forever bar her dower interest or estate in & to the above-mentioned lands & premises.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

HARVEY L. CHRISTIE. [SEAL.]
ADDIE L. CHRISTIE. [SEAL.]

Signed, sealed, and delivered in the presence of—
— — —

STATE OF MISSOURI, }
City of St. Louis, } ss:

Before me, Isaac H. Orr, a notary public in and for said city of St. Louis, State of Missouri, on this day personally appeared Harvey L. Christie and Addie L. Christie, known to me to be the same persons whose names are subscribed to the annexed instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

And the said Addie L. Christie, wife of the said Harvey L. Christie, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Addie L. Christie, acknowledged that instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of January, A. D. 1893.

My commission expires January 30, 1894.

ISAAC H. ORR,

[SEAL.]

Notary Public, City St. Louis, State of Missouri.

(Endorsed :) Filed and recorded at request of S. M. Franklin February 6th, A. D. 1893, at 9 a. m., Book 11, Deeds of R. E., pages 610 & 611. A. Wentworth, county recorder.

289 [Endorsed:] No. 5. Deed. F. 16. Harvey L. Christie and Addie L. Christie to Santiago Ainsa, trustee, dated Jan'y 24, 1893. Ainsa, adm'r, etc., vs. U. S. *et al.* Agua Prieta grant. Filed Jan. 25, 1894.

290

PLAINTIFF'S EXHIBIT P.

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of FRANK ELY, Deceased.

TERRITORY OF ARIZONA, }
County of Pima, } ss:

I, John S. Wood, probate judge of the county of Pima, Territory of Arizona, and *ex officio* clerk of the probate court of said county, do hereby certify that Santiago Ainsa was on the 23rd day of November, 1891, duly appointed by the said probate court of Pima county administrator, with will annexed, of the estate of Frank Ely, deceased; that he duly qualified as such, and that on said day letters of administration, with will annexed, were duly issued to him as administrator of said estate of Frank Ely, deceased, and that said letters have not been revoked, and that said Santiago Ainsa is now the duly acting and qualified administrator of said estate.

In witness whereof I have hereunto set my hand and the seal of said probate court this 18th day of February, A. D. 1892.

[SEAL.]

JOHN S. WOOD,
Judge and *ex Officio* Clerk.

(C. 5.) Filed in the office of the clerk, court of private land claims, Jan. 25, 1894.

JAS. H. REEDER, Clerk,
By ———, Deputy.

291

PLAINTIFF'S EXHIBIT "Q."

STATE OF SONORA, }
Republic of Mexico, } ss:

LOLA ELIAS.

Be it remembered that pursuant to the commission hereto annexed, and on the 12th day of October, 1892, at Nogales, in the State of Sonora, Republic of Mexico, before me, Delos H. Smith, consul of the United States of America in and for the city of Nogales, in said State of Sonora, Republic of Mexico, duly appointed and commissioned to administer oaths, &c., personally appeared Dolores Elias, for short called and generally known by the name of Lola Elias, a spinster, one of the witnesses mentioned in the foregoing commission, who, being by me first duly sworn through Louis Carrillo, a competent interpreter, duly sworn by me according to law to interpret from English into Spanish and from Spanish into English, did make answer to the interrogatories annexed to said commission as follows, the said interrogatories being first interpreted to her into the Spanish language by the aforesaid interpreter:

Answer to the 1st interrogatory. My name is Dolores Elias, but I

— commonly known as Lola Elias, Lola being the short Spanish abbreviation for Dolores. I am twenty-seven years of age; am unmarried; my residence is at Guaymas, but I am here only temporarily; I live with my mother and have no occupation.

Answer to the 2nd interrogatory. My father's name was Jose Juan Elias; my mother's name is Bernardina Lucero de Elias.

Answer to the 3rd interrogatory. My father is dead. He died in the district of Arispe, in the State of Sonora, in the year 1865, when

I was about four months old. I know this because I have
292 heard my mother and older brothers say so.

Answer to the 4th interrogatory. There were married at Tecoripa in the year 1848. I have heard my mother say so.

Answer to the 5th interrogatory. My father left surviving him seven children, as follows: Plutarco, Alejandro, Carlos, Manuel, Rafael, Jesus, and myself. All these are over twenty-one years of age, and all reside in the State of Sonora, Mexico, except Jesus, who married in 1881 to one Jose Maria Maytorena. She died in 1888 and left four children, now living, as follows: Agustina, Filomena, Bernardina, y Jesus, all being minors, and all reside at Guaymas, in the State of Sonora, Mexico.

Answer to the 6th interrogatory. The name of my grandfather was Rafael Elias; also known as Rafael Elias Gonzales; my grandmother was Guadalupe Perez de Elias, on my father's side. I know it because I have my mother and my uncles, Jose Maria Elias and Manuel Elias, say so.

Answer to the 7th interrogatory. They are both dead. They died in Sonora, Mexico. My grandfather died many years before I was born. My grandmother died about the year 1872. My information comes from what I have heard my mother and uncles say.

Answer to the 8th interrogatory. They left surviving them three sons, to wit, Manuel, Jose Maria, and Jose Juan. The last was my father. Manuel and Jose Maria are now old men and reside at San Pedro, in this State of Sonora. Jose Juan Elias, my father, died as stated in the answer to the 5th interrogatory, and the children he left and the one who died, Jesus, and the children she left, where all reside, and their ages are as is stated in said 5th interrogatory.

293 Answer to the 9th interrogatory. My grandfather, Rafael Elias, was the only son of Rafael Elias, the last being, therefore, my great-grandfather; and this my great-grandfather, Rafael Elias, was a full brother of Ygnacio Elias and Eulalia Elias, the persons to whom the Mexican government granted the said ranch of San Ygnacio del Barbocomari, situated in the Territory of Arizona. All this I know from the talk I have often heard of my mother and uncles and as a tradition in our family.

Answer to the 10th interrogatory. His name, as I said before, was Rafael Elias; he is dead; he died a great many years ago. I do not know of any other children that he left surviving him, other than my grandfather, Rafael Elias. I have already given the names and ages of his descendants.

Answer to the 11th interrogatory. I was only about a year old when she died and do not remember her of my own knowledge.

Answer to the 12th interrogatory. She is dead. As I said before, I have heard that she died about the year 1866; she died in Arispe, the State of Sonora, Mexico. I know this from what I have heard my mother and uncles say in my presence.

Answer to the 13th interrogatory. She was never married, and she died and without successions of her body. My information comes from the tradition in the family as I heard them from my mother and other relations.

Answer to the 14th interrogatory. As Eulalia Elias was the sister of my great-grandfather, Rafael Elias, she was my great-grand aunt. The family tree is as follows: Eulalia Elias was sister of Ygnacio

294 Elias and my great-grandfather, Rafael Elias; my great-grandfather died, leaving a son of the same name, Rafael

Elias, who was my grandfather; my said grandfather, Rafael Elias, died, leaving three children, to wit, Jose Maria, who is living; Manuel, who is also living, and father, Jose Juan, who is dead. I have already stated what children my father, Jose Juan Elias, left surviving him and have given their names and ages and place of residence.

DOLORES ELIAS.

Sworn and subscribed before me this 12th day of October, A. D. one thousand eight hundred and ninety-two, at Nogales, Sonora, Mexico.

DELOS H. SMITH,

[SEAL.]

U. S. Consul.

I, Delos H. Smith, consul of the United States of America, residing at the city of Nogales, in the State of Sonora, Republic of Mexico, do hereby certify that the foregoing answers of the witness Dolores Elias were reduced to writing and were read over and corrected by said witness, and that the same were signed and sworn to by said witness before me this 12th day of October, A. D. eighteen hundred and ninety-two.

In witness whereof I have hereunto set my hand and affixed the seal of this consulate, at Nogales, in the State of Sonora, Republic of Mexico, this 12th day of October, A. D. 1892, and the Independence of the United States the 117th.

DELOS H. SMITH,

[SEAL.]

U. S. Consul.

295 The Territory of Arizona, United States of America, to any notary public of the State of Sonora, Republic of Mexico, or any minister, commissioner, or chargé d'affairs resident in or accredited to the Republic of Mexico, or any consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in the Republic of Mexico, Greeting:

You or either of you are authorized and required to summons and to cause to appear before you Plutarco Elias, Alejandro Elias, Carlos Elias, Manuel Elias, Jesus Elias, Lola Elias, Rafael Elias, and Jose Maria Elias, residents of *in* the State of Sonora, Republic of Mexico, forthwith, and to take the answers under oath of each of said witnesses to the interrogatories hereto annexed, propounded to each of said witnesses, in a certain cause now pending in the district court of the first judicial district of the Territory of Arizona in and for the county of Pima, wherein Santiago Ainsa, administrator of the estate, with will annexed, *of the estate of* Frank Ely, deceased, and Santiago Ainsa, trustee, and Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased, are plaintiffs and Robert Perrin, Angel Varela, Elena Varela, Jesus Elias de Serrano, Harvey L. Christie, and The Arizona and New Mexico Railroad Company, a corporation, are defendants, and having reduced said answers of said witnesses to writing you will cause each of said witnesses to swear and subscribe to his said answers before you, to which you will certify officially; and to return without delay this commission and interrogatories and the answers of the said witnesses thereto to the clerk of the first judicial district court of the Territory of Arizona in and for the county of Pima, and addressed to said clerk at Tucson, county of Pima, Arizona Territory, in the manner required by law.

296 Witness Hon. Richard E. Sloan, judge of the said first judicial district court of the Territory of Arizona in and for the county of Pima, at Tucson, in the county of Pima, Territory of Arizona, this 21st day of September, 1892.

Attest my hand and seal of said district court the day and year last above written.

[SEAL.]

BREWSTER CANERON, *Clerk.*

297 Interrogatories to be propounded to each of the witnesses, Plutarco Elias, Alejandro Elias, Carlos Elias, Manuel Elias, Jesus Elias, Lola Elias, Rafael Elias, and Jose Maria Elias, on behalf of plaintiff.

1st interrogatory. State your name, age, residence, and occupation.

2nd. interrogatory. What is the full name of your father and your mother?

3rd interrogatory. Are your father and mother living or dead? If either is dead, state when and where he or she died; also state the source of your information.

4th interrogatory. When and where were your father and mother married to each other, and give the source of your information.

5th interrogatory. If you say that your father is dead, then state what children he left surviving him, give the full name, present age, and residence of each child, and if any such child is dead, then state when and where and at what age said child died; also state whether or not such deceased child — at the time of his or her death, and, if so, what issue, if any, such deceased child left surviving him or her, and give the name, age, and residence of each such descendant.

6th interrogatory. What was the name of your grandfather and your grandmother on your father's side, and state the source of your information.

7th interrogatory. Are your said grandfather and grand-
298 mother or your father's side living or dead? If dead, state when and where they died and the source of your information.

8th interrogatory. If you say that your grandfather and grandmother on your father's side are both dead, then state what children they left surviving them; give the full name, present age, and residence of each child, and if any such child is dead, then state when and where and at what age such child died; also state whether or not such deceased child was married at the time of his or her death, and, if so, what issue, if any, such deceased child left surviving him or her, and give the name, age, and residence of each such descendant.

9th interrogatory. Was your said grandfather or your great-grandfather on your father's side related in any way to one certain Ygnacio Elias and Eulalia Elias, being the same persons to whom the State of Sonora, Republic of Mexico, sold or granted certain lands, by patent or deed dated in the year 1832, said lands being then situate in the said State of Sonora, but being now in the Territory of Arizona and being known and called the Rancho San Ygnacio del Barbocomari? If so, state what the relationship was and state the source of your information.

10th interrogatory. If in reply to the last interrogatory you say that your great-grandfather was a brother to said Eulalia Elias, then give the name of your said great-grandfather; state whether he is living or dead, and if dead, state when he died and what children he left surviving him, and give the full name, present age, and residence of each child, and if any such child is dead, then state
when and where and at what age such child died; also state
299 whether or not such deceased child was married at the time of his or her death, and, if so, what issue, if any, such deceased child left surviving him or her, and give the name, age, and residence of each such descendant.

11th interrogatory. Are you or were you ever acquainted with the aforesaid Eulalia Elias?

12th interrogatory. Do you know whether or not the said Eulalia Elias is living or dead? If you say that he is dead, then state, if you know, when and where she died and give the source of your information.

13th interrogatory. If you say that the said Eulalia Elias is dead,

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

then state whether or not she had been ever married and give the source of your information.

14th interrogatory. Are you related to the said Eulalia Elias? If so, state the relationship; also show how the same arises and make a family tree.

SELIM M. FRANKLIN,

Attorney for Plff.

Endorsement: Filed in the office of the clerk, court of private land claims, Feb. 15, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

2991 [Endorsed:] Lola Elias.

300

MAP.

PLAINTIFF'S EXHIBIT R.

(Here follows diagram marked page 300.)

301

PLAINTIFF'S EXHIBIT S.

Copy.

"E." J. S.
46878-50794.
1897.

DEPARTMENT OF THE INTERIOR, F. F.
GENERAL LAND OFFICE,
WASHINGTON, D. C., July 6, 1897.

U. S. surveyor general, Tucson, Arizona.

SIR: Referring to your letters dated May 10 and 24, 1897, and of replies thereto, dated respectively May 19 and June 11, 1897, relating to the location of monument number 19, of Maj. Emory's survey of the Mexican boundary line, and monument number 82, of the recent (Barlow) survey of said boundary, in approximate longitude 109 degrees 25' west, I have now to advise you that from an examination of the manuscript report of the recent survey it is ascertained that monument number 82 is identical in position with monument number 19 of the old, or Emory, survey, as will appear from the following quotation from Mr. Barlow's report:

"No. 81. Another sectional monument was located less than one mile west of No. 80. It occupies the highest point of the line in crossing the Perrilla mountains and affords a superb view in all directions.

"About one mile further west, among the hills leading toward the Sulphur Spring valley, No. 82 was rebuilt of masonry on the site of old No. 19. It stands near the road connecting the San Bernardino and San Pedro valleys. To the southeast of this monument is a conspicuous landmark known as the 'Niggerhead,' a tall, steep rock surrounding one of the highest mountains of this range. The Mexican name of this peak is Cerro Gallardo."

Very respectfully,
(Signed)

BINGER HERMANN,
Commissioner.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk,*
By ———, *Deputy.*

[Endorsed:] Plt'- Ex. S.

302

AN EXHIBIT OF PLAINTIFF.

Field-notes of the Survey of the Agua Prieta Private Land Claim, Situated in Cochise County, Arizona, and Sonora, Mexico; Surveyed by F. W. Oury, October 1st, 1892.

303 Field-notes of the survey of the Agua Prieta private land claim.

This claim is located across the Sulphur Spring valley at the point where runs the international boundary line between the United States and Mexico. It is therefore situated partly in Cochise county, Arizona, but mostly in Sonora, Mexico.

The center of the claim, according to the expediente, is at the place known as Agua Prieta or Blackwater. This latter place takes its name from the existence here during wet weather of a pond of black sulphury water. It has retained its name even to the present time and is well and generally known under that name by all the inhabitants of the neighborhood. Being thus convinced of its identity, I accept this as the central point or place of beginning of my survey.

From here, the expediente reads, the measurement was given towards the south and ended at a bunch of willow trees which are found in the middle of the valley, and this point was taken as the south center of the claim.

In a southerly direction down the valley from Agua Prieta and about six miles distant from it, I found in the very channel of the valley a bunch of old willow trees. With the exception of a solitary willow, which is evidently a young tree, there are none of this kind of trees between Agua Prieta and the point last mentioned, where the bunch of willows is to be found. Opposite these willows, on the edge of the mesa and outside of harm from flood waters, I found a well-built and well-preserved monument of loose rock, which my guide, who is an old native-born resident of the neighboring town of Fronteras, informs me is commonly known as the south center monument of the Agua Prieta ranch. This monument has, to judge from its well-preserved appearance, been built quite recently, but about 50
304 feet easterly from this last mound of rocks and on the same hill I found the scattered remains of a very old mound of loose stones. As this location answered very precisely the

description of the south center of this claim given in the expediente of the same, and as I could find no other place along the valley which does so, I accepted it as such. Returning to the center at Agua Prieta, I traveled up the valley, carefully searching over every hill for a monument of stones or the remains of one. At a point about three and one-half miles distant on the top of a small hill I found a mound of rock, well built and still standing, which was evidently quite recently erected, and which my guide informed me he had helped to build there as marking the international boundary line between the United States and Mexico. Its location, as I subsequently determined from my survey, is very nearly on this line. Proceeding still further up the valley about one and one-half miles, on the top of a very small hill, I found the remains of what must have been a comparatively small monument of loose stones, rocks in this locality being very scarce. I continued my search up the valley for six miles, looking with equal care on every hilltop for the remains of a monument, and could find none whatsoever. I therefore accepted this latter point as the north center of the claim as called for in the expediente.

Returning again to the center, I go in an easterly direction along what is commonly known as the old overland road to California, and which is the same road leading directly from the town of Sta. Cruz, Sonora, Mexico, to the San Bernardino valley, and on the top of a high hill situated on the south side of the divide or pass through

which this road crosses the mountains I found a large monument of loose rock. This answering so precisely the description of the location of the east center monument of the claim given in the "expediente," I take it as such in my survey.

Returning to the center, I go from there in a westerly direction to where a certain range of small mountains seen from here come
305 to a point towards the north, and a little beyond this point, on a long, sloping, red hill, which has a reef or ledge of rock on its south side, I found a monument of loose rock which I accept as the west center of the claim. This answers perfectly the description of the location of the west center of the claim given in the expediente. Its location on a red hill renders it comparatively easy of identification, as there are no other red hills in the vicinity. The Anibacachi Mts., which come to a point towards the north in front of the small range last referred to, have a distinctly dark appearance, being composed of the common bluish-gray limestone.

From the west center as above described and established by me I run east of north across the extreme south end of the Bisbee mountains, and at a distance of a little over three miles, on the top of a small limestone hill standing by itself, I find a monument of stones, which point I take as the northwest corner of the claim. There are three or four other small hills in the vicinity which might also be said to be in front of the west center monument, but I could find no traces of a monument on any of these.

The southwest corner of the claim is described in the expediente as being at the foot of a high hill, which has fronting it on the south side another hill having a black crest or reef of rock, and on the east a pass or divide, which has to its left two hills which form some red cliffs.

As I have before stated, there is only one small range of mountains in which occur this peculiar red formation. This is the small range near the north end of which is the west center of the claim. In this range there is only one place at which are to be found some marked & prominent cliffs of red rock. These cliffs are located, just as is stated in the expediente, on two hills lying to the north of a divide, and directly opposite or west from these is the high hill at the north foot of which I placed a mound of rocks to mark the southwest corner, though I could nowhere in this locality
306 find a monument already existing or any traces of one. To the south of this high hill, about a mile from it, there is a prominent peak of the Anibacachi Mts., having a black cliff on its top, which serves further to identify the location of this corner.

I next proceeded to establish the southeast corner of the claim, and for this purpose I return to the east center of the claim already described by me. From here I go in a southerly direction along the Perrillo, now also known as the Ceniza Mts., and at the first pass or divide which I encountered, on the northerly hillside of this divide, I find the remains of an old monument of loose stones. This point, accurately answering the location called for in the expediente, I accept as the southwest corner of the claim.

The location of the northeast corner is described in the expediente

as being on a small hill to the right and adjoining the "puerto de la Silla" or Saddle pass and near two other higher hills.

I made diligent inquiries of several settlers in the neighborhood, who did not know what was known as the paso de la Silla, but my guide, who was born in Fronteras some fifty years ago and who has lived in this neighborhood all his life, claimed he knew the pass known by that name, and took me to a broad pass situated at the south end of the Swisshelm Mts., near what is now known as Silver peak, and used by travellers crossing from this portion of the Sulphur Spring valley to the San Bernardino valley. To the right of this pass, on a small, round hill, near to two other higher ones, I found a monument of stones, which I took as the northeast corner of the claim.

I regard it of importance to state further that at the point where this pass lies the profile of the adjoining mountains shows very perfectly and noticeable the outline of a saddle, the round and abrupt

Silver peak serving as the "horn."

307 In addition to the above, it is to be remarked that between the pass where the case center is located and the one where I established the northeast corner there is no other broad and commonly travelled pass in the mountains. These reasons lead me to believe, though it is not now commonly known by that name, that this divide was in former times known as the "Paso de la Silla."

All the monuments of the Agua Prieta private land claim being thus established, I proceed to the survey of its exterior boundaries, as follows:

I commence at the center of the claim and run thence—

Fect.		
	No. 10 deg. 51' W.,	var., 12 deg. E.,
19,259	To international boundary line between the United States and Mexico,	
27,043	to the north center monument of the claim.	
	Thence N. 46 deg. 08' E.,	var., 12 deg. E.,
60,101	to the N. E. corner of the claim.	
	Thence S. 4 deg. 09' E.,	var., 12 deg. E.,
49,429	to the international boundary line between the United States and Mexico,	
51,121	to the east center of the claim.	
	Thence S. 13 deg. 54' W.,	var., 12 deg. E.,
22,165	to the S. E. corner of the claim.	
	Thence S. 48 deg. 10' W.,	var., 12 deg. E.,
39,416	to the south center of the claim.	
	Thence N. 64 deg. 16' W.,	var., 12 deg. E.,
85,839	to the southwest cor. of the claim.	
	Thence N. 36 deg. 49' E.,	var., 12 deg. E.,
1,587	to the international boundary line between the United States and Mexico,	
16,581	to the northwest corner of the claim.	
	Thence S. 85 deg. 17' E.,	var., 12 deg. E.,
52,972	to the north center of the claim.	
	Thence S. 10 deg. 51' E.,	var., 12 deg. E.,
27,048	to the center of the claim and place of beginning.	

That portion of this claim within the United States contains an area of 42,299.

Respectfully submitted.

F. W. O'RY.

Tucson, Arizona, October 1, 1892.

308 Endorsements: Agua Prieta field-notes. No. 5. In the court of private land claims. Santiago Ainsa, trustee, etc., c. The United States. Agua Prieta grant. Field-notes of F. W. Oury. Rochester Ford, attorney for claimant.

309 DEFENDANTS' EXHIBIT A.

Testimonio del Expediente de denuncia de un terreno situado en el Distrito de Hermosillo hecho por el Señor José Camou, hijo.

310 Al margen una estampilla de cincuenta centavos debidamente cancelada.—C. Juez de Distrito.—José Camou, hijo, ante Vd. en la vía y forma mas procedente en derecho, digo: que soy dueño en propiedad de unos terrenos en la frontera norte de este Estado y en el Dist. de Arizpe, conocidos por los nombres de "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romemero," y "Lo de las Mesteñas," cuyos límites son los que demarcan sus títulos que con oportunidad presentaré.—Y conviniendo á mis intereses adquirir las demasías, si las hubiere, previa medición, los denuncio en debida forma, protestando hacer los pagos debidos en los términos designados por la ley de la materia, y suplicando á Vd. se sirva nombrar como perito agrimensor al C. Florencio Rosas.—No procedo con malicia: lo protesto.—Hermosillo, Abril veintidos de mil ochocientos ochenta.—José Camou, h.—Otrosí:—digo:—Que en atención á la grande distancia y dificultades naturales de la estación presente, se sirva el Juzgado de su muy digno cargo concederme un término bastante para la mensura.—fecha ut supra.—José Camou, h.—rúbrica.—Guaymas, Abril veinticuatro de mil ochocientos ochenta.—En la fecha anotada se recibió el presente denuncia.—Conste.—Guaymas, Mayo 31 de mil ochocientos ochenta.—Por presentado en el poder general que se acompaña: tómese razon y devuélvase al interesado.—Se admite el denuncia á que se contrae, e anterior escrito sin perjuicio de tercero que mejor derecho tenga.—En consecuencia se nombra al agrimensor C. Florencio Rosas, para que previa su aceptación y protesta que otorgará ante el C. Juez 2º. de 1ª Yustancia de Hermosillo á quien se dirigirá requisitoria al afecto con los insertos necesarios, proceda con citación de colindantes y presencia de sus títulos á la remedida y levantamiento de planos de los terrenos llamados "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" y "Lo de las Mesteñas," situadas en la frontera norte del Estado y en el Distrito de Arizpe: cuyas demasías se solicitan por el propietario de dichos terrenos, teniendo especial cuidado de que al practicar separadamente la remedida de cada uno de los mencionados terrenos, se sirva marcar tanto en las actas de mensura,

como en los mapas respectivos, las demarcas que cada uno contiene, segun sus correspondientes titulos de propiedad, los que tendrá á la vista al practicar sus operaciones, y se sujetará en sus procedimientos á las leyes de veinte de Julio y 2 de Agosto de mil ochocientos sesenta y tres, remitiendo originales á este Juzgado las diligencias que practique para la secuela del expediente, quedando advertido el apoderado del denunciante que si dentro de noventa dias contados desde esta fecha no presenta las diligencias que se mandan practicar se dara por desierto el presente denuncia. El Juez 1º. Suplente de Distrito del Estado en ejercicio lo proveyó y firmó con los testigos de su asistencia ordinaria por falta de secretario.—Moran.—rúbrica.—A.—E. Fontes.—rúbrica.—A.—En seguida se notificó el auto anterior al apoderado en este negocio, Cº. Juan P. M. Camou, de que enterado dijo: que le oye y firmó.—J. P. M. Camou.—rúbrica.—A.—E. Fontes.—rúbrica.—A.—En la misma fecha se libró la requisitoria que manda el auto anterior.—Conste.—En la misma fecha doy fe haber visto, leído y devuelto al interesado un poder amplísimo otorgado por el Sr. Dn. José Camou, hijo, á favor del Cº. Juan P. M. Camou, en Hermosillo con fecha cuatro del corriente mes ante el Escribano Público Nacional Matias Moran; contiene cuantas cláusulas puedan ser necesarias á los de su especie y ademas la especial para denunciar terrenos baldios y pedir el deslinde y mejoramiento de los de la propiedad del otorgante.—Está bastantando en esta ciudad con fecha veintidos del corriente por el Cº. Lic. Jesus Mº. Gaxiola y tiene las correspondientes estampillas debidamente canceladas.—Lo que asiento para constancia.—Moran.—rúbrica.—Guaymas, Agosto diez y siete de mil ochocientos ochenta.—Recibidas las diligencias de mensura que quedan agregadas en cumplimiento de lo prevenido en el artículo 16 de la ley de veinte de Julio de mil ochocientos sesenta y tres inquiere de la Jefatura de Hacienda si la Hacienda Pública está en posesión del terreno denunciado á cuyo efecto se le pasará este expediente.—Lo mandó y firmó el Juez Interino de Distrito.—Doy fe.—Monte-verde.—rúbrica.—Manuel Altamira Alas.—rúbrica.—En seguida presente el apoderado del denunciante é impuesto del auto anterior dijo: lo oye, está conforme y firmó. Doy fe.—J. P. M. Camou.—rúbrica.—Manuel Altamira Alas.—rúbrica.—Se cumplió con lo mandado.—Conste.—Al márgen un sello que dice: Jefatura de Hacienda. Guaymas, Estado de Sonora.—Cº. Juez de Distrito.—No existiendo en la jefatura de mi cargo registro de los terrenos baldios que está en posesión la Hacienda pública, ignora por lo mismo si él á que se refiere el auto anterior lo estará ó no.—Guaymas, Agosto 19 de 1880.—Luis Vixanton.—rúbrica.—Recibido el veintiuno de Agosto.—Conste.—Guaymas, Septiembre primero de mil ochocientos ochenta.—Por no aparecer segun el antecedente informe que la Hacienda pública esté en posesión del terreno denunciado de conformidad con el artículo 17 de la ley de 20 de Julio de sesenta y tres publíquese dicho.—Dos estampillas de á cincuenta centavos cada una debidamente canceladas.—Antonio Moran, Juez 1º. Suplente de Distrito del Estado en ejercicio.—A. V. Ciudad. Juez 2º. de 1º. Y nstancia del Distrito de Hermosillo, hago saber: que en un escrito presentado

ante este Juzgado por Dn. José Camou, hijo, denunciando las demasías de los terrenos de su propiedad llamados "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" y lo de las "Mesteñas," sitos en los Distritos de Fronteras y Arizpe, se ha proveído el auto siguiente.—Guaymas, Mayo treinta y uno de mil ochocientos ochenta.—Por presentado con el poder general que se acompaña, tómesese razon y devuélvase al interesado.—Se admite el denuncia á que se contrae el anterior escrito sin perjuicio de tercero que mejor derecho tenga.—En consecuencia se nombra el agrimensor C. Florencio Rosas para que previa su aceptación y protesta que otorgará ante el C. Juez 2º de 1.ª Ynstancia de Hermosillo á quien se dirigirá requisitoria al efecto con los insertos necesarios proceda con citación de colindantes y presencia de sus títulos á la remedida y levantamientos de planos de los terrenos llamados "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" y lo de las "Mesteñas" situados en la frontera norte del Estado y en el Distrito de Arizpe; cuyas demasías se solicitan por el propietario de dichos terrenos; teniendo especial cuidado de que al practicar separadamente la remedida de cada uno de los mencionados terrenos, marque tanto en las actas de mensura como en los mapas respectivos las demasías que cada uno contenga segun sus correspondientes títulos de propiedad los que tendrá á la vista al practicar sus operaciones, y se sugetará en sus procedimientos á las leyes de veinte de Julio y dos de Agosto de 1863;—remitiendo originales á este Juzgado las diligencias que practique para la fecluela del expediente; quedando advertido el apoderado del denunciante que si dentro de noventa dias contados desde esta fecha no presenta las diligencias que se mandan practicar, se dará por desierto el presente denuncia.—El Juez 1º. Suplente de Distrito en al Estado en ejercicio lo proveyó y firmó con los testigos de su asistencia.—Moran.—A.—Fontes.—Á.—G. Rodriguez.—El escrito de que se hace referencia es el siguiente.—C. Juez de Distrito.—José Camou, hijo, ante Ud. en la via y forma mas procedente en derecho, digo: que soy dueño en propiedad de unos terrenos en la frontera norte de este Estado y en el Distrito de Arizpe, conocidos por los nombres de "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," y lo de las "Mesteñas," cuyos límites son los que demarcan sus títulos que con oportunidad presentaré.—Y conviniendo á mis intereses adquirir las demasías, si las hubiere, previa medición, las denunció en debida forma protestando hacer los pagos debidos en los términos designados por la ley de la materia, y suplicando á Ud. se sirva nombrar como perito agrimensor al C. Florencio Rosas.—No procedo con malicia: lo protesto.—Hermosillo, Abril veinte de mil ochocientos ochenta.—José Camou, h.—Y para que lo por mi mandado en el auto inserto tenga su debido cumplimiento, á nombre de la Justicia de la Unión, exhorto y requiero á V. suplicándole de mi parte que luego de recibida la presente la mande guardar y cumplir entregándola al agrimensor nombrado previa su aceptación y pro-

testa para el desempeño de la comisión que se le confiere.—Es dada en Guaymas de Zaragoza, á treinta y uno de Mayo de mil ochocientos ochenta.—Antonio Moran.—rúbrica.—A.—E. Fontes.—A.—G. Rodriguez.—rúbricas.—Recibido en Hermosillo, el día ocho de Junio del mismo año.—Conste.—Hermosillo, Junio ocho de ochocientos ochenta.—Cítese á este Juzgado al C. Florencio Rosas y hágasele saber el nombramiento á que se refiere la requisitoria que antecede, y previa su aceptación y protesta entréguesele la presente para su cumplimiento.—El Juez 2^o de 1^a Ynstancia lo mandó y firmó por ante los testigos de asistencia.—D. Gonzalez.—rúbrica.—A.—M. Urechurtu.—A.—Ramon Duran.—rúbricas.—Un timbre de á peso debidamente cancelado.—En el mismo día notificado del auto y requisitoria que anteceden el Sr. Dn. Florencio Rosas, dijo: que lo oye y acepta el cargo que se le confiere, protestando desempeñarlo fielmente firmó.—Gonzalez.—rúbrica.—Florencio Rosas.—rúbrica.—A.—M. Urechurtu.—A.—Ramon Duran.—rúbricas.—En seguida y en tres fojas útiles se entregaron estas diligencias como está mandado.—Conste.—Hermosillo, Junio nueve de mil ochocientos ochenta.—Como se manda por el auto del C. Juez de Distrito de Sonora, cítese al interesado, José Camou, h., á los colindantes, José Maria Elias, Presidente Municipal de los Pueblos de Fronteras y Cuquiáachi, tambien como al Agrimensor Gral del Territorio de Arizona, (Estados Unidos) para que por sí ó por apoderado comparezcan al paraje llamado la "Agua Prieta" el día veintiocho del presente mes, para que en vista de sus documentos defiendan los linderos de sus propiedades en la mensura que se practicará del mismo día en adelante.—Yo, el comisionado agrimensor, así lo determinó y firmé con testigos de asistencia.—Florencio Rosas.—rúbrica.—A.—C. Echevarria.—A.—Teodoro Yslas.—rúbricas.—En los campos de Naidenibáachi, Agua Prieta, Santa Bárbara, Mesténas, á los veintiocho dias del mes de Junio de mil ochocientos ochenta.—Reunidos el agrimensor que suscribe, la parte interesada, representada por el Sr. Pascual Camou, segun carta-poder que acompaño, el Presidente Municipal de los pueblos de Fronteras y Cuquiáachi, testigos de asistencia, y algunos ayudantes de mensura, se les hizo saber que se comenzaria la mensura ó remediada desde la mojonera cardinal de Norte de la Agua Prieta, por ser aquella muy conocida y que los títulos la refieren de lomita pequeñita, situada en el valle de la Agua Prieta hacia el Oriente y se halla un monton de piedras en su cúspide ó en su mayor altura, y no habiendo oposición alguna, se observó el rumbo N 79° 3' E y se midieron trece mil ciento diez metros hasta lo alto del cerro de Gallardo en el puerto de la Silla que refieren los títulos, se halla un monumento á las faldas del Norte de dicho cerro que sirve de division entre la Republica de México y la de los E. E V. V. De allí (allí) linea recta por toda la sierra del Perrillo rumbo S 3° 41' E se midieron catorce mil doscientos cincuenta y un metros hasta una lomita baja pedregosa á las caidas de la misma sierra, en donde se formó un monton de piedras por no hallarse la mojonera antigua: De allí siguiendo el perimetro que indica los títulos se observó el Sur 79° 03' O y se

midieron ocho mil ochocientos tres metros hasta el monton de sauces que rezan los títulos, y en una loma inmediata á dichos sauces se formó una mojonera para que sirviera de mojonera provisional, debiendo colocarse en los sauces: De allí se tiró la línea al Sur $23^{\circ} 46'$ —y se midieron quince mil ciento ochenta siete metros que terminaron en una mesa, que en los títulos se señala grande, frente por el Norte con el ultimo monton de alamos del arroyo de Santa Bárbara, en cuya mesa ó cordones se formó un monton de piedras en señal de mojonera; y dejando para el dia siguiente la mensura se serró esta diligencia.—Al siguiente dia reunidas las mismas personas dichas, y al efecto de seguir la remedida, desde la mojonera desde la mojonera frente al último monton de alamos puesto en ella se observó el Sur $16^{\circ} 48' E$ y se midieron diez y nueve mil seiscientos sesenta y cinco metros que remataron en la mojonera de egidos del pueblo de Fronteras, en una lomita baja, y larga, donde se puso un poste en un monton de piedras.—De allí, se tiró la línea á los picachitos por no encontrarse la mojonera S. é inmediata á ellos, y se midieron seis mil cuatrocientos ochenta y cuatro metros, que finalizaron en lo mas alto del picacho mas al Sur, colindando esa parte con los egidos de Cuquiárachi. De allí, se observó el S $67^{\circ} 12' O$ y se midieron diez y siete mil ciento veintisiete metros, que terminaron al otro lado del cajon de Jurivana, y en lo mas alto de la sierra del mismo nombre se mandó poner mojonera. De allí, rumbo N. diez y nueve mil setecientos metros hasta el cerro de Magallanes que refieren los títulos. De allí, rumbo N $23^{\circ} 59' O$ veinticinco mil ochocientos treinta y nueve metros, hasta el camino real de Fronteras en una mesa inmediata á un bajío; y no habiendo mojonera se formó una. De allí, á punto de partida quedó determinada la última línea del perímetro de la figura del terreno, y como se ve en el adjunto plano su rumbo es N $71^{\circ} E$, longitud veintinueve mil seiscientos setenta y seis metros, con lo que sierra la mensura: colindando dichos terrenos por el N. con el Territorio de Arizona, por el Sur con los egidos del pueblo de Cuquiárachi y por el Oriente con los de Fronteras, y finalmente por el Poniente con terrenos de San Pedro del C. José Maria Elias.—Las mojoneras en los ángulos del terreno son las mismas que señalan los títulos, habiendo demasiado exceso en algunas líneas, por motivo del enemigo Apache en aquella época, sujetándose el perito á una errónea graduación que las mas veces fué viciosa. Cerrada la figura con las medidas indicadas, y hechos los cálculos necesarios, se halló que resultan por aquellas ciento veintimil veintidos hectaras, siete aras y ochenta y tres centiaras, que segregando cincuenta mil cuatrocientas catorce hectaras, diez y seis aras y noventa y siete centiaras, que acusan los títulos, quedan ó son demasías, setenta mil seiscientas siete hectaras, noventa aras y ochenta y seis centiaras en

314 todos rumbos, con lo que concluyó la remedida de dichos terrenos.—En general los terrenos son quebrados, con bastantes pastos y maderas, abunda la planta de maguey, y contiene algunos aguajes, siendo los principales Sta. Bárbara y Agua Prieta.—La declinación de la aguja observada en la fecha fué $11^{\circ} 45' E$ y los

azimutes de las líneas fueron observadas del meridiano magnético.— Los colindantes presentes é interesados fueron conformes con lo practicado. El presidente municipal de los indicados pueblos me presentó oficio de conformidad el que añadido al expediente.—Doy fe.—Pascual Camou.—rúbrica.—Florencio Rosas—rúbrica.—A.—Francisco Verdugo.—A.—Manuel Verdugo.—rúbricas.—Hermosillo, Julio veintidos de mil ochocientos ochenta.—Concluido el expediente de mensura de los terrenos de Naidenibácachi, Santa Bárbara, Agua Prieta, Baltazar, remítase al Juzgado de Distrito para la secuela del mismo. Conste.—Al márgen un timbre de á peso debidamente cancelado.—Hermosillo, Junio doce de mil ochocientos ochenta.—Sr. D. Pascual Camou.—Tucson.—Estimado Tio:—Debiendo practicarse la medida de los terrenos que poseo en la frontera Norte de este Estado, conocidos por los nombres de “Agua Prieta,” “Santa Bárbara,” “Naidenibácachi,” “Agua de Baltazar,” “Lo del Gato,” “Lo de Tomas Romero,” y lo de las “Mesteñas,” en virtud de formal denuncia que hice de sus demasias, y no pudiendo yo asistir esta medida, por negocios que me impiden salir: por la presente confiero á Ud. todo mi poder y facultad para que en representación de mis propios derechos y acciones, acompañe al agrimensor nombrado C. Florencio Rosas, y en la práctica de las mismas medidas represente Ud. mi persona en todo y por todo; en la inteligencia quo cuanto Ud. haga y practique en pro de mis derechos en este asunto, aprobaré afectando para ello mi responsabilidad y bienes habidos y por haber.—Sin otro asunto quedo como siempre su afectísimo, sobrino y s. s. José Camou, hijo.—Testigo.—Y. Haguno.—rúbrica.—Testigo.—S. J. Robles.—rúbrica.—Ayuntamiento Municipal de los Pueblos de Fronteras y Cuquiárachi.—Habiendo presenciado la remediada de los terrenos llamados “Agua de Baltazar,” “Mesteñas,” “Tomas Romero,” y “Gato,” que por orden del C. Juez de Distrito de Sonora, se mandó practicar dichas medidas por el agrimensor comisionado C. Florencio Rosas. Este ayuntamiento ha creído conveniente en virtud de haber quedado satisfecho de dicha mensura en beneficio de dichos pueblos, manifestarlo oficialmente al expresado comisionado agrimensor, para los fines consiguientes.—Libertad y Constitución. Fronteras, Julio 5 de mil ochocientos ochenta.—J. Escalante.—Al C. Agrimensor Comisionado para las mensuras de los terrenos, Agua de Baltazar, etc. Presente. Al margen un timbre de cincuenta centavos debidamente cancelado.—Publíquese dicho denuncia por medio de Edictos que se hará por tres veces consecutivas en el periódico oficial del Estado para que los que se consideren con mejor derecho á él se presenten á este Juzgado á deducirlos dentro de treinta dias contados de la primera publicación y de no verificarlo se adjudicarán los demasias que expresa este expediente.—El Juez Interino de Distrito de Sonora así lo proveyó y firmó. Doy fe.—Monteverde.—Manuel Altamira Alas.—rúbrica.—En la propia fecha del auto anterior se notificó al apoderado del denunciante y enterado firmó.—Doy fe.—J. P. M. Camou.—rúbrica.—Manuel Altamira Alas.—rúbrica.—En la misma fecha se mandó publicar en el periódico oficial del Estado el siguiente.—Edicto.—Los que se crean con mejor derecho á las demasias de los

ranchos denominados "Agua Prieta," "Santa Bárbara," "Naidenibá-cachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," y lo de las "Mesteñas," situados en el Distrito de Arizpe, denunci-
 315 adas por su propietario, José Camou, hijo, se presentarán á este Juzgado de Distrito, por sí ó por apoderado instruido y expen-
 sado á deducir en sus derechos dentro de treinta dias contados de la primera publicación del presente edicto y de no verificarlo en el término ya señalado se adjudicarán dichas demasias á el denunci-
 ante.—Lo que asiento por diligencia. Manuel Altamira Alas.—
 rúbrica.—Guaymas, Julio siete de mil ochocientos ochenta y siete.—
 Habiéndose ya concluido el juicio de oposición que contra este de-
 nuncio hizo el C. Plutarco Elias, por sí y en representación de su
 señora madre y hermanos, y publicados ya los edictos respectivos en
 el Periódico Oficial, "La Constitución," en Septiembre de mil ocho-
 cientos ochenta, passe este expediente á la Jefatura de Hacienda
 para que forme la liquidación de dicho terreno conforme á la tarifa
 vigente al tiempo de que fué admitido.—El Juez de Distrito lo de-
 cretó y firmó.—Doy Fe.—Monteverde.—Ramon Martinez, rúbrica.—
 En la misma fecha notificado el apoderado del interesado del auto
 anterior dijo: que lo oye y firmó.—Doy fe.—Ramon Martinez.—J.
 P. M. Camou, rúbrica.—En seguida se cumplió con lo mandado.
 Conste.—Martinez.—Liquidación que practica esta Jefatura del valor
 del terreno denunciado y mencionado en este expediente.—Valor de
 70,607 hectaras, 90 aras, 86 centiaras á 12 centavos hectara segun
 tarifa de 1880—\$8,472.94c.—El pago debe hacerse en esta forma:

Al Erario federal en efectivo.....	\$2,824.31c.
Al Erario federal en bonos.....	1,412.16c.
Al Erario del Edo en efvo.....	2,824.31c.
Al Erario del Edo en certifs.....	1,412.16c.
Suma.....	\$8,472.94c.

Guaymas, Julio trece de mil ochocientos ochenta y siete.—El Jefe
 de Hacienda.—Conrado Chawaj.—rúbrica.—Un sello que dice: Re-
 pública Mexicana.—Jefatura de Hacienda en Sonora.—Guaymas,
 Julio quince de mil ochocientos ochenta y siete.—Pase este expedi-
 ente al Sr. Promotor fiscal para que pida conforme ó desecho.—El
 Juez de Distrito lo decretó y firmó.—Doy fe.—Monteverde.—Ramon
 Martinez.—rúbricas.—En la misma fecha notificado el Señor Pro-
 motor fiscal del auto anterior dijo: que lo oye y que para poder
 formarles su pedimento pide al Juzgado se sirva mandar tomar
 razon del título correspondiente despues de hecho lo cual, suppli-
 casele pase este expediente y firmó.—Doy fe.—Robles.—rúbrica.—
 Ramon Martinez, Srio.—En la misma fecha doy fe haber visto, y
 devuelto al interesado, un título de merced de diez y ocho sitios, doce
 y media caballerias de tierra para oria de ganado mayor y caballada
 que comprenden los puestos nombrados "Agua Prieta," "Naideni-
 bá-cachi," y "Santa Bárbara," en jurisdicción del presidio de Fron-
 teras: fué expedido dicho título en la capital de Arizpe con fecha
 veintiocho de Diciembre de mil ochocientos treinta y seis, por el
 Tesorero General del Departamento de Sonora á favor de los Señores

José Juan, José Maria y Manuel Elias y la señora su madre, Doña Guadalupe Perez de Elias á favor de los Srs. Camou Hermanos, en virtud de los cuales quedaron estos señores dueños de dichos terrenos, y por último doy fe haber visto la escritura de disolución de la compañía Camou Hermanos, en virtud de la cual y segun oláusula 4^a de dicha escritura, el Señor José Camou, hijo, quedó dueño absoluto de los mencionados terrenos, lo que se asienta para la debida constancia.—Lio.—Monteverde.—J. P. M. Camou.—rúbricas.—En la misma fecha tomada la antecedente razon, se pasa este antecedente al C. Promotor fiscal para los efectos, del anterior auto. Conste.—Martinez. rúbrica.—Guaymas

316 Agosto 5 de mil ochocientos ochenta y siete.—Por recibida la anterior informacion practicada por el C. Juez de 1^a Ynstancia del Distrito de Arizpe, agréguese á su respectivo expediente y apareciendo que el denunciante ha estado y está en posesión de estas demasias por el tiempo que prefija la ley como estar amojonado ese terreno tiene derecho á que se le rebaje la mitad del precio como lo previene el artículo 5^o de la ley de baldios como en consecuencia vuelvo este expediente á la Jefatura de Hacienda para que en ese sentido reforme su liquidación.—El Juez de Distrito asi lo decretó y firmó. Doy fe.—Monteverde.—Ramon Martinez.—rúbrica.—En la misma fecha notificado el Sr. J. P. M. Camou dijo: que lo oye y firmó.—Doy Fe.—Ramon Martinez.—J. P. M. Camou.—rúbricas.—En la misma fecha se cumplió con lo mandado. Conste.—Martinez.—Liquidación reformada que practica esta Jefatura del valor del terreno denunciado y mensurado en este expediente.—Valor de 70,607 hectaras, 90 aras y 86 centiaras á 12 centavos hectara segun tarifa de 1880.—Se deduce la mitad del valor del terreno por tener derecho el denunciante á la franquicia que concede el artículo 5^o de la ley de baldios.—\$4,236.47c.—Liquido \$4,236.47c.—El pago debe hacerse on esta forma:

Al Erario federal en efectivo	\$1,412.16
Al Erario federal en bonos	706.07
Al Erario Estado en efectivo	1,412.16
Al Erario del Estado certifies	706.07

\$4,236.47c.

Guaymas, Agosto seis de mil ochocientos ochenta y siete.—El Jefe de Hacienda.—Conrado Chawaj.—rúbrica.—Un sello que dice: República Mexicana.—Jefatura de Hacienda en Sonora.—Agosto ocho de mil ochocientos ochenta y siete.—En esta fecha doy fe haber visto, y devuelto al interesado, un título de merced de diez sitios una tercera parte de otro y una quinta parte de caballeria para cria de ganado mayor y cabellada comprendido en los puestos de nombre:—“Agua de Baltazar,” “Lo del Gato,” “Lo de Tomas Romero,” y lo de las “Mesteñas,” expedido en la capital de Arizpe á los veintiocho dias del mes de Diciembre de mil ochocientos treinta y seis, autorizado por el Sr. D. José Maria Mendoza, como Tesorero General del Departamento de Sonora.—Tambien hay constancia en este mismo documento de haberse pagado su justo valor, asi como al calce de él,

la razon siguiente: Un sello que dice: Secretaria de Fomento, Colonización é Yndustria.—México.—10, Jul. 86.—Revisado y revalidado conforme al superior acuerdo del Ejecutivo de la República, fecha seis de Julio del presente año.—México, Julio diez de mil ochocientos ochenta y seis.—Manuel Fernandez.—of.—mayor.—rúbrica.—Asi tambien doy fe haber visto al fin del título de que se ha tomado razon á fojas doce vuelta otra razon del tenor siguiente:—Un sello que dice: Secretaria de Fomento, Colonización é Yndustria.—México.—10 Jul. 86.—Revisado y revalidado conforme al superior acuerdo del Ejecutivo de la República, fecha seis de Julio del presente año.—México, Julio diez de mil ochocientos ochenta y seis.—Manuel Fernandez.—O. M.—rúbrica.—Lo que asiento por diligencia firmando con el apoderado del interesado.—Doy fe.—Monteverde.—J. M. Camou.—Ramon Martinez.—rúbricas.—Un sello que dice: Juzgado de 1ª Ynstancia del Distrito de Arizpe.—Practicada la información que con fecha 12 del corriente, solicitó ante ese Juzgado el Señor Juan P. M. Camou, como representante de mi hermano, José Camou, hijo, remito á Ud. en cuatro fojas útiles el expediente respectivo.—Libertad y Constitución.—Arizpe, Julio veintiocho de mil ochocientos ochenta y siete. J. Pujol.—rúbrica.—Al Juez de Distrito en el Estado.—

Guaymas.—Una estampilla de cincuenta centavos debidamente cancelada.—C. Juez de Distrito.—Juan P. M. Camou, en representación acreditada de mi hermano, José Camou, hijo, ante Ud. como mejor proceda digo: que á los intereses de mi poderdante conviene probar ante ese Juzgado de su muy digno cargo, la posesión por mas de diez años, en que ha estado y aun está de las demasías de los terrenos denominados "Agua Prieta," "Santa Bárbara," "Naidenibáachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" y lo de las "Mesteñas," situados en el Distrito de Arizpe, de este Estado, con el fin de obtener la rebaja á que se refiere el artículo 5º de la ley sobre la ocupación y enagenación de terrenos baldios. Con tal objeto ocurro á Ud. suplicando se sirva librar requisitoria en forma al Juez de 1ª Ynstancia del referido distrito de Arizpe, previas las formalidades legales, y con audiencia del empleado que nombre el C. Promotor Fiscal, examine á á los ciudadanos Leonardo Gamez, Jesus Aguirre y Rafael Barrera, Ignacio Elias, con arreglo al interrogatorio adjunto, y como consta á ese Juzgado que mi poderdante es el propietario de los susodichos terrenos por los títulos exhibidos en el juicio de oposicion ya concluido promovido por el Sr. Plutarco Elias, madre y hermanos, pido se haga asi constar en la requisitoria que solicitó.—Esto expuesto á Ud. suplico se sirva decretar de conformaidad por ser asi de justicia.—Guaymas, Julio doce de mil ochocientos ochenta y siete.—J. P. M. Camou.—rúbrica.—Recibido el doce de Julio del año corriente á las cuatro de la tarde con el interrogatorio que acompaña.—Conste.—Martinez.—rúbrica.—Guaymas, Julio doce de mil ochocientos ochenta y siete.—Original con el interrogatorio relativo remítase este escrito al Juez de 1ª Ynstancia en el Distrito de Arizpe, para que con citación del empleado que nombre el promotor Fiscal, practique la información de testigos solicitada en dicho ocurso.—Devolviéndose á este

Juzgado para los efectos legales con las diligencias que en consecuencia practiquen.—El Juez de Distrito lo decretó y firmó.—Doy fe.—Lic. Monteverde.—Ramon Martinez.—rúbricas.—En tres del mismo mes notificado el Sr. D. P. M. Camou dijo: que lo oye y firmó.—Doy fe.—Ramon Martinez.—J. P. M. Camou.—rúbricas.—En la misma fecha notificado el promotor Fiscal, dijo: que lo oye y que designa al administrador del timbre de Arizpe para que presencie el examen de los testigos.—Esto expuso y firmó.—Doy fe.—Robles.—Ramon Martinez.—rúbricas.—En la misma fecha remitió este ocurso con un interrogatorio al Juez de 1.^a Ynstancia del Distrito de Arizpe.—Conste.—Martinez.—Un sello que dice: Juzgado de 1.^a Ynstancia del *del* Distrito de Arizpe.—Arizpe, Julio veintiuno de mil ochocientos ochenta y siete.—Por recibidas estas diligencias, obséquiasse lo dispuesto por el Señor Juez de Distrito, citándose al efecto á los testigos indicados por el solicitante y al Administrador subalterno del timbre, cuya diligencia tendrá lugar el dia de hoy á las diez de la mañana. Fecha devuélvase al Juzgado de su origen. Damos fe.—J. Pujol.—rúbrica.—A.—Cequeros.—A.—F. Miramon.—En seguida se libraron las citas.—Conste.—En el mismo dia, á la hora fijada, presentos en este Juzgado el testigo Jesus Aguirre y el Administrador subalterno del Timbre, Sr. Francisco J. Acuña, se recibió al primero la protesta de ley, é interrogado por sus generales, dijo: llamarse como queda dicho, de treinta y dos años de edad, casado, empleado, y de esta vecindad, resultando no estar comprendido en los puntos finales del articulo 747 del Código de Procedimientos Civiles.—Preguntado conforme al segundo punto del interrogatorio presentado, dijo: que es cierto el contenido de la pregunta.—Al tercer punto, contestó: que tambien es cierto el
318 contenido de la pregunta.—Al cuarto punto, contestó: Que lo dicho lo sabe porque conoce los terrenos indicados y ha visto los mojonos de que se hace merito y sabe de ciencia cierta que el Sr. Camou ha estado y está en posesión de ellos.—Leida que le fué su declaración en ella se ratificó y firmó, manifestando en este auto el Sr. Administrador no tener tacha que oponer al testigo. Damos fe.—F. Pujol.—T. Siqueiros.—rúbricas.—J. Aguirre.—L. Gamez.—F. Miramon.—rúbricas.—Un sello que dice: Juzgado de 1.^a Ynstancia del Distrito de Arizpe.—Un timbre de cincuenta centavos debidamente cancelado.—Ynterrogatorio de cuyo tenor deberán ser examinados los Señores Leonardo Gamez, Jesus Aguirre, Rafael Barrera é Ygnacio Elias.—1.^o. Digan sus generales.—2.^o. Digan si es cierto que el Sr. Camou, h., ha estado por mas de diez años y aun esta en posesión de los terrenos denominados "Agua Prieta," "Santa Bárbara," "Naidenibacachi," "Agua de Baltazar," "Lo el Gato," "Lo de Tomas Romero," y lo de las "Mesteñas."—3.^o. Digan si es cierto que los expresados terrenos han estado y aun estan por lo menos mojonado artificialmente en todos los ángulos de su perímetro.—4.^o. Que den razon de su dicho.—Guaymas, Julio doce de mil ochocientos ochenta y siete. J. P. M. Camou, rúbrica.—En seguida presente el testigo Leonardo Gamez, y el Administrador del timbre, Sr. Acuña, se recibió al primero la protesta de ley é interrogado por sus generales dijo: llamarse como queda dicho, de treinta y cinco años de

edad, casado, comerciante y de esta vecindad, resultando no comprenderle los puntos finales del artículo 747 del Código de Procedimientos Civiles.—Hecha que le fué la segunda pregunta del interrogatorio respectivo dijo: (que lo dicho lo sabe porque conoce los terrenos indicados) que es cierto el contenido de la pregunta.—A la tercera pregunta contestó: que tambien es cierto el contenido de la pregunta.—Al cuarto punto dijo: que dicho lo sabe porque conoce los terrenos indicados, así como los títulos y los planos de ellos y ha visto los mojones á que se refiere la tercera pregunta.—Leida que le fué su declaración en ella se ratificó y firmó expresando en este auto el Sr. Acuña no tener tacha que oponer al testigo. Damos fe.—F. Pujol.—Leonardo Gamez.—T.—C. Acuña.—A.—F. Siqueros.—A.—F. Miramon.—rúbricas.—En seguida presente el testigo Rafael Barreda y el administrador del timbre, Señor Acuña, se recibió al primero la protesta de ley é interrogado por sus generales dijo: llamarse como queda dicho, de cincuenta y ocho años de edad, casado, labrador y de esta vecindad, no tocándole los puntos finales del artículo 747 del Código de Procedimientos Civiles.—Hecha que le fué la segunda pregunta del interrogatorio, dijo: que es cierto y le consta el contenido de ella.—A la tercera contestó: que es cierto y le consta su contenido.—A la cuarta dijo: que lo dicho lo sabe, porque conoce los terrenos mencionados; ha estado en ellos y ha visto los respectivos mojones.—Leida que le fué su declaración, en ella se ratificó y firmó, manifestando en este auto el Sr. Acuña no tener tacha que oponer al testigo. Damos fe.—F. Pujol.—R. Barreda.—F. C. Acuña.—A.—F. Siqueros.—A.—F. Miramon.—rúbricas.—Se hace constar que el testigo Ygnacio E. Elias no se encuentra en esta población, ignorándose la fecha de su regreso.—En veintiocho del mismo se devuelvon estas diligencias al Juzgado de Distrito, como está mandado.—Conste.—Guaymas, Agosto veintidos de mil ochocientos ochenta y siete.—Habiéndose ya tomado razon de los títulos y demasias que se denunciaron en este expediente, vuélvasele á pasar al Sr. Promotor Fiscal, para que pida conforme á derecho.—El Juez de Distrito lo decretó y firmó.—Doy fe. Monteverde.—

Ramon Martinez.—rúbricas.—En la misma fecha se le notificó el auto anterior al Sr. Promotor Fiscal, y enterado de él, dijo: que lo ve y firmó.—Doy fe.—Robles.—rúbrica.—En la misma fecha se cumplió con lo mandado. Conste.—Martinez.—C. Juez de Distrito: El Promotor Fiscal dice: que encuentra este expediente en estado de decretar la adjudicación en favor del denunciante.—Guaymas, Agosto 22 de mil ochocientos ochenta y siete.—Antonio Robles.—rúbrica.—Guaymas, Agosto veintidos de mil ochocientos ochenta y siete.—Visto el presente expediente de denuncia de las demasias de los ranchos conocidos con los nombres de "Agua Prieta," "Santa Bárbara," "Naidenibáachi" "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," y lo de las "Mesteñas," hecho por el C. José Camou, hijo. Visto el plano y diligencias de mensura que formó y practicó el Cº. Florencio Rosas, con total arreglo á las leyes de 20 de Julio y 2 de Agosto de 1863:—el informe de la Jefatura de Hacienda que dice ignora estar ó no en posesión de Hacienda Pública, del terreno denunciado y en virtud

de lo cual y de conformidad con lo prevenido en el artículo 17 de la primera de las leyes antes citadas, se mandó publicar tres veces consecutivas en el Periódico Oficial, "La Constitución;" y apareciendo que dentro del término de estos Edictos, se opuso á la adjudicación de estas demasias el C. Plutarco Elias, por sí y en representación de su Señora madre y hermanos, cuyo juicio se concluyó, adverso al opositor.—Vista la ultima liquidación hecha por la Jefatura de Hacienda del valor del referido terreno: lo expuesto por el Señor Promotor Fiscal y todo lo demas que consta en este expediente, este Juzgado decreta:—1°.—Se adjudica en posesión y sin perjuicio de tercero que mejor derecho represente al C. José Camou, hijo, las demasias de los ranchos "Agua Prieta" "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar" "Lo del Gato," "Lo de Tomas Romero," y lo de las "Mesteñas," por 70607 hectaras, 90 aras, 86 centiaras—setenta mil seiscientas siete hectaras, noventa aras y ochenta y seis centiaras, lo que aparece de las diligencias de mensura practicadas y planos respectivos.—2°.—La presente adjudicación no surtirá efecto alguno si ántes no es aprobada por la Secretaria de Fomento, á quien, por conducto del ejecutivo del Estado, se le someterá á testimonio y copia de plano respectivo.—3°.—No se pondrá en posesión al interesado de este terreno adjudicado y que no esta comprendido en ninguna de las comisiones y deslindes del Distrito de Arizpe en donde se encuentra, si no es previa la certificación de la (H) Oficina de Hacienda en que conste que ha pagado su valor y estampillas adheridas al título.—El Juez de Distrito lo decretó y firmó.—Doy fe. Lic. Monteverde.—Ramon Martinez. rúbrica.—En la misma fecha se le notificó el auto anterior al C. J. P. M. Camou, y enterado dijo: que lo oye y firmó. Doy fe.—Ramon Martinez.—Juan P. M. Camou—rúbricas.—En veinticuatro del presente mes se remitió copia de este expediente á la Secretaria de Fomento, por conducto del Ejecutivo del Estado.—Conste.—Martinez.—En trece de Septiembre del presente año, se remite otra copia de este y plano respectivo, por haberse extraviado el primero en el correo.—Conste.—Sello que dice: Secretaria de Fomento, Colonización, Industria y Comercio.—México.—México.—Sección 1.ª, Departamento de Terrenos Baldios. Con esta fecha se dice al Jefe de Hacienda en ese Estado lo siguiente: El Presidente de la República se ha servido aprobar la adjudicación decretada por el Juzgado de Distrito de ese Estado á favor del Sr. José Camou, hijo, de las demasias de sus terrenos llamados: "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," y lo de las "Mesteñas," sitos en el Distrito de Arizpe, de ese Estado.—En consecuencia se le ha expedido el título respectivo de propiedad, cuyo documento

320 se remite á Ud. á fin de que, conforme á las últimas disposiciones de fecha 18 de Febrero de mil ochocientos ochenta y seis, proceda á hacer el cobro del referido terreno y el de las estampillas del papel en que se le extendió el título.—Remitiéndolo en seguida al Juzgado de Distrito para que de acuerdo con lo prevenido en el artículo 19 de la ley de 22 de Julio de 1863, se entregue al interesado por dicho Juzgado y le mande dar la posesión correspondiente,—previa la comprobación de estar verificado el pago en su totalidad,

de lo que tambien tendrá Ud. cuidado dar aviso oportuno á esta Secretaria.—Y lo trascribo á Ud. para su conocimiento y efectos que se expresan en la parte que le corresponde.—Libertad y Constitución. México, Enero tres de mil ochocientos ochenta y ocho.—P. o. d. S.—M. Fernandez, O. M.—rúbrica.—Al Juez de Distrito, Guaymas, Estado de Sonora.—Un sello que dice: República Mexicana. Gobierno del Estado libre y soberano de Sonora.—En 31 fojas útiles y plano respectivo se recibió en este Gobierno adjunto al oficio de Ud. fecha de antier el testimonio del expediente de denuncia de las demasias de los ranchos denominados: “Agua Prieta,” “Agua de Baltazar,” “Naidenibácachi,” “Lo del Gato,” “Lo de Tomas Romero” y lo de las “Mesteñas,” que se encuentran en el Distrito de Arizpe, hecho por su propietario, Sr. José Camou, hijo, teniendo el honor de manifestarle en respuesta que hoy mismo se remite dicho documento con el respectivo informe á la Secretaria de Fomento para su superior resolución.—Libertad y Constitución. Hermosillo, Septiembre quince de mil ochocientos ochenta y siete.—Lorenzo Torres.—rúbrica.—Eduardo Catañeda.—Secretario. Al Juez de Distrito del Estado.—Guaymas.—Secretaria de Fomento, Colonización, Industria y Comercio.—Sección 1ª. Departamento de Terrenos Baldios.—Nº 2874.—Examinado en esta Secretaria el testimonio de expediente instruido en ese Juzgado de Distrito con motivo del denuncia hecho por el Ciudadano José Camou, hijo, de las demasias de los terrenos denunciados de su propiedad: “Agua Prieta,” “Santa Bárbara,” “Naidenibacachi,” “Agua de Baltazar,” “Lo del Gato,” “Lo de Tomas Romero” y “Las Mesteñas,” sitios en el Distrito de Arispe de ese Estado, se ha visto que existe una discordancia entre la propiedad que dedujo el agrimensor y la que aparece por las tomas de razon de los títulos, pues segun el perito, aquella es de 50414 hectaras, 16 aras, 97 centiaras, y por dichas tomas de razon resulta ser 55680 hectaras, 99 aras, 41 centiaras, porque una de ellas dice que la merced es de 18 sitios, $2\frac{1}{2}$ caballerias, que hacen 32,135 hectaras, 91 aras, 92 centiaras y la del otro titulo expresa que ampara $10\frac{1}{2}$ sitios y $3\frac{1}{2}$ caballerias que hacen 23,545 hectaras, 07 aras 49 centiaras, todo lo cual suma aquel total, y por lo mismo por demasias únicamente aparecen 65,341 hectaras, 8 aras, 42 centiaras, y no 70,607 hectaras, 90 aras, 86 centiaras como expresa el perito.—Se ha visto tambien que las pruebas para fundar la concesión de la rebaja de la mitad del valor del terreno, no son suficientes, pues primeramente la posesión de diez años que se alega, es del año de 1877 al 12 de Julio del actual, que es la fecha del interrogatorio, y no la que requiere el artículo 5º de la Ley de la materia, que precisamente expresa que tal posesión ha de ser de diez años en esa fecha, esto es, en la de 22 de Julio de 1863, y en segundo lugar, aunque por la información testimonial se atestigua que el terreno ha estado amojonado en todos los ángulos del perímetro, esto está desmentido por el acta de mensura, en la cual el agrimensor expresa que únicamente se encontraron dos mojoneras, una al norte en la linea divisoria de los Estados Unidos, en el punto que empezó la medida, y otra al sur, perteneciente á los egidos de Fronteras, por lo cual tubo que ir poniendo en el remate

321 de las líneas que media y en los lugares que designaban los títulos, unos montones de piedras en señal de mojoneras; y como ni siquiera consta que en defecto de este requisito exista el otro que exige el artículo 5° referente al cultivo del terreno, resulta que legalmente no ha hibido derecho para alcanzar la gracia de la rebaja de la mitad que el mismo artículo concede á los poseedores que reúnen esas condiciones.—Por último, existiendo compañías deslindadoras de baldíos en ese Estado, se ignora si las demasías de que se trata han sido respetadas por aquellas, pues de esto no existe ninguna constancia en el testimonio examinado.—En vista pues de todo esto el Presidente de la República ha tenido á bien acordar se diga á Ud.: primero, que se sirva hacer que por el agrimensor se rectifiquen las operaciones que practicó para deducir las demasías, manifestando cuales son por fin éstas, y cual el monto de la propiedad que los títulos ampara; no estando legalmente justificado el derecho á la rebaja de la mitad del valor del terreno, notifique Ud. al interesado que debería pagar el valor íntegro que resulte segun la aclaración que haga el agrimensor; y tercero, que se justifique competentemente que la adjudicación de que se trata no perjudica los derechos adquiridos por las compañías deslindadoras, ó por algun otro motivo, y que por lo tanto dichas demasías estan libres para poderlas enagenar. Libertad y Constitución. México, Octubre veintisiete de mil ochocientos ochenta y siete. P. o. d. S.—M. Fernandez.—O. M.—rúbrica.—Al Juez de Distrito del Estado de Sonora.—Guaymas.—Guaymas, Enero tres de mil ochocientos ochenta y ocho.—Para los efectos legales, hágase saber al denunciante la nota de observaciones que antecede, fecha veintisiete de Octubre del año próximo pasado, del Ministerio de Fomento, y en vista de la respuesta, se proveerá. El Juez de Distrito suplente así lo decretó y firmó.—Doy fe, Francisco Figueroa.—Ramon Martinez.—rúbricas. En la misma fecha notificado el denunciante dijo: que en virtud de hallarse ausente el agrimensor que practicó la mensura, suplica al Juzgado si lo tiene á bien, se sirva nombrar al C. Agrimensor Lauro Aguirre, para que en vista de los datos correspondientes, ratifique las operaciones que practicó aquel segun la nota de observaciones que se le hace saber: que en cuanto á la información de testigos para acreditar que el que responde es acreedor á la rebaja de la mitad del precio del terreno denunciado, promoverá lo conveniente; y que esto mismo hará por lo que hace á la justificación que se requiere para probar que la adjudicación de que se trata, no perjudica los derechos adquiridos por las compañías deslindadoras ó por algun otro motivo. Esto expuso y firmó.—Doy fe.—Ramon Martinez.—José Camou, hijo.—rúbrica.—Guaymas, Enero tres de mil ochocientos ochenta y ocho.—En vista de la anterior respuesta del denunciante, se nombra al agrimensor, C. Lauro Aguirre, á fin de que previa su aceptación y protesta y consultando los datos respectivos que constan en este expediente, proceda á rectificar las operaciones que practicó el C. Agrimensor Florencio Rosas, para deducir las demasías de que se trata, cuyo trabajo presentará en su oportunidad á este Juzgado.—El Juez 2°. Suplente de Distrito, encargado del Juzgado, así lo decretó y firmó.—Doy fe.—Francisco

J. Yrigoyen.—Ramon Martinez.—rúbricas.—En la misma fecha presente el C. Agrimensor Lauro Aguirre, se le hizo saber el auto anterior y enterado dijo: que acepta el nombramiento que se le hace, y protesta desempeñar su cometido fiel y legalmente, segun su leal saber y entender, y que procederá desde luego á subsanar los defectos anotados por la Secretaria de Fomento, rectificando las operaciones hechas por el C°. Florencio Rosas y firmó.—Doy fe.—Ramon Martinez.—Lauro Aguirre.—Al margen un timbre de cincuenta

322 centavos debidamente cancelado.—Segun la toma de razon de los títulos que amparan los terrenos del Sr. José Camou, hijo, las superficies tituladas son las siguientes:—18 sitios, $12\frac{1}{2}$ caballerías por un título y $10\frac{1}{3}$ sitios, $3\frac{1}{4}$ caballerías por el otro.—Esto hace un total $28\frac{1}{3}$ sitios, 15.7 caballerías, veintiocho y un tercio sitios, quince caballerías y siete decimos de caballería.—El valor legal de un sitio es de mil setecientas cincuenta y cinco hectaras, sesenta y una aras, 1.755^u 61 y el de una caballería es de cuarenta y dos hectaras, siete mil novoientas cincuenta y tres metros cuadrados, once centímetros cuadrados, 42 H. 7953.11 M) Segun estos valores se tiene:

Por 28 sitios 3.333.....	49,742 H.	2248.13 M.
Por 15.7 caballerías	671	8863.83
Superficie titulada.....	50,414 H.	1111.96

Haciendo la reducción por lo que corresponde á cada título tenemos:

Por 18 sitios	31,600 H.	9800.00
Por $12\frac{1}{2}$	534 H.	9413.87

Para primer título	32,135 H.	9213.87
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Por 10 sitios, 3.333	18,141 H.	2448.13
Por 32 caballerías.....	136 H.	9449.95

Para segundo título	18,278 H.	1898.08
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De manera que hecha la reducción por porciones y por el total titulada resulta una superficie igual, como debia esperarse.—Hay una diferencia muy notable entre el valor que sacó el que hizo la reducción en la Secretaria de Fomento y el que yo saco.—La razon de esta diferencia paso á explicarla:—En la reducción correspondiente al 1er título la diferencia es solamente de 22 Ms. Esto proviene de que él que hizo la reducción usó probablemente las tablas de logaritmos para hacerla y bien sabido es que las tablas de logaritmos solo dan exactas las siete primeras cifras y las que pasan de siete, como en el caso actual, no son mas que aproximadas. En la reducción correspondiente al segundo título, la diferencia es muy notable y dependió que al hacer la reducción se tomaron trece sitios en lugar de diez, y por lo cual la reducción sacó ademas del error del uso de los logaritmos el valor correspondiente á dichos tres sitios, y el cual es de cinco mil doscientas sesenta y seis hectaras, ochenta y tres aras. Hechas estas aclaraciones resulta:

Superficie total	121,022 H. 0783 M.
Superficie titulada	50,414 H. 1112 M.
Demasias.....	70,607 H. 9671 M.

De manera que las demasias son setenta mil seiscientas siete hec-
 taras, noventa y seis aras, setenta y una centiaras, 70,607 H. 96 A.
 71 C. Guaymas, Enero seis de mil ochocientos ochenta y ocho.—
 Lauro Aguirre.—Recibido el siete del mes de la fecha á las doce del
 día. Conste.—Martínez.—Un timbre de cincuenta centavos debida-
 mente cancelado.—C. Juez de Distrito.—José Camou, hijo, mayor de
 edad, casado, vecino de la ciudad de Hermosillo, Estado de Sonora, y
 con residencia accidental en este puerto, salvas las protestas oportu-
 nas y legales, digo: que con fecha tres del corriente mes se me
 ha hecho saber la resolución del Ministerio de Fomento sobre el
 denuncia que hice de las demasias de los ranchos denominados
 "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Bal-
 tazar," "Lo del Gato," "Lo de Tomas Romero" y lo de las "Mes-
 teñas," sitios en el Distrito de Arizpe del mismo Estado. Y en cum-
 plimiento de la precitada resolución, conviene á mis intereses
 323 acreditar *acreditar* en forma legal que he estado y aun estoy
 en posesión de las referidas demasias por mas de diez años;
 y que aun han tenido y aun tienen los amojonamientos prevenidos
 por la ley.—En tal virtud á Ud. suplico se sirva hacer comparecer á
 su presencia á los C. C. Manuel Aguayo, Jose M. Maytorena, Miguel
 Campillo, y José Lino Yberri, y examinarlos con intervención del
 Señor Promotor Fiscal al tenor del interrogatorio que acompaño.—
 Protesto la mejor buena fe. Guaymas, Enero nueve de mil ocho-
 cientos ochenta y ocho.—José Camou, hijo.—rúbrica.—otro si
 digo:—Que la presente gestión y las ulteriores que promueva en
 este negocio y en los demas que me atañen, no importan la revoca-
 ción del poder amplísimo que tengo otorgado á mi hermano, J. P. M.
 Camou, fecha ut supra, José Camou, hijo.—rúbrica.—Recibido en la
 fecha un interrogatorio que acompaño á las once de la mañana.—
 Conste.—Martínez.—rúbrica.—Guaymas, Enero once de mil ocho-
 cientos ochenta y ocho.—Por recibido el presente escrito con el in-
 terrogatorio que se acompaña: agréguese á su expediente, y como
 se pide, con presencia del C. Promotor Fiscal de este Juzgado, reci-
 base la información que se solicita, á cuya efecto cítese á los ciuda-
 danos Manuel Aguayo, José M. Maytorena, Miguel Campillo, y José
 Lino Yberri y declarárseles al tenor del interrogatorio referido.—
 El Juez 2º Suplente de distrito de Sonora en ejercicio así lo proveyó
 y firmó.—Doy fe.—Francisco Yrigoyen.—Ramon Martínez.—rúbri-
 cas.—En seguida se notificó el auto anterior al C. José Camou, h., y
 enterado dijo: que lo oye y firma.—José Camou, h.—Ramon Mar-
 tínez.—rúbricas.—Un timbre de cincuenta cienctavos debidamente
 cancelado.—Ynterrogatorio á cuyo tenor deben ser examinados en
 forma legal los C. C. Manuel Aguayo, José M. Maytorena, Miguel
 Campillo y José Lino Yberri.—1º. Digan sus generales. 2º. Digan
 si es cierto y les consta que los terrenos denominados "Agua Prieta,"
 "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del

Gato," "Lo de Tomas Romero" y lo de las "Mesteñas," sitios en el Distrito de Arizpe, han sido poseídos desde el año de 1836, fecha de los títulos, primeramente por los Señores Elias, como sus primitivos dueños, despues por los Sres. Camou Hermanos y en seguida hasta la fecha por José Camou, hijo.—3°. Digan si los precitados terrenos han estado amparados desde el principio hasta la fecha con el amojonamiento prevenido por la ley de terrenos baldios en todos los ángulos de su perímetro, y que si alguna vez, algunas de estas mojoneras han sido destruidas por los indios bárbaros, se han repuesto tan pronto como han podido.—4°. Den razon de su dicho.—Guaymas, Enero nueve de mil ochocientos ochenta y ocho.—José Camou, hijo.—rúbrica.—En la misma fecha se notificó el auto anterior al C. Promoto Fiscal y enterado dijo: que lo oye y firma.—Doy fe.—Robles.—rúbrica.—Ramon Martinez.—En la propia fecha presente en este Juzgado, previa citación del ciudadano Promotor Fiscal, el testigo C. Manuel Aguayo, á efecto de dar cumplimiento á lo mandado en el auto anterior, se le tomó la protesta de ley, por la que ofreció conducirse con verdad en lo que supiere y fuere preguntado, y siéndolo al tenor de las preguntas contenidas en el interrogatorio presentado por el Sr. Camou, contestó á la primera.—Que se llama como queda dicho, natural de Sahuaripa de este Estado, y vecino de esta Ciudad, de cincuenta y un años de edad, de estado viudo, y de profesión minero.—A la segunda.—Dijo que es cierto el contenido de esta pregunta. A la tercera contestó.—que es igualmente cierto el contenido de esta pregunta. A la cuarta.—dijo.—que lo expuesto lo sabe por informes y porque al exponente le consta ser de pública notoriedad los dichos de que se trata, habiendo sido poseídos esos terrenos por los Señores Elias desde el año de mil ochocientos treinta y seis, fecha en que les fueron
324 adjudicados, y despues por los Señores Camou hasta la fecha; y en cuanto al amojonamiento lo sabe tambien por personas fidedignas que conocen bien aquellos terrenos, quienes han informado al declarante estar con los correspondientes mojones en todos los ángulos. Y leida que le fue su anterior declaracion dijo ser la misma que tiene dada y en ella se afirmó y ratificó, firmando con el C. Juez, el Promotor Fiscal y susdrito Secretario.—Doy fe.—Francisco Yrigoyen.—Ramon Martinez.—M. Aguayo.—rúbricas.—En seguida presente en este mismo Juzgado el testigo, C. José M. Maytorena, previas las propias formalidades que el anterior, se le tomó la protesta de ley por lo que ofreció conducirse con verdad en lo que supiere y fuere preguntado y siéndolo al tenor de las preguntas contenidas en el interrogatorio presentado por el Sr. Camou, contestó á la 1.—Que se llama como queda dicho, natural y vecino de esta ciudad, mayor de cuarenta años, casado y de profesión labrador. A la 2ª dijo: Que es cierto el contenido de esta pregunta. A la 3ª. Que es igualmente cierto y verdadero el contenido de esta pregunta. A la 4ª contestó: Que lo expuesto lo sabe por informes que ha tenido de personas conocedoras de los terrenos de que se trata, y por ser de pública notoriedad que han sido poseídos por los Señores Elias desde que les fueron adjudicados año de 1836 y despues por los Señores Camou hasta la fecha, y en cuanto al amojonamiento lo sabe tambien

por informes de esas mismas personas de hallarse los terrenos con las correspondientes mojoneras en todos sus ángulos. Y leída que le fué al declarante su anterior declaración en ella se ratificó y firmó, haziéndolo tambien el ciudadano Juez y Promotor Fiscal por ante el suscrito Secretario. Doy fe.—E. R.—Francisco Yrigoyen.—Jose M. Maytorena.—Antonio Robles.—Ramon Martinez.—rúbricas.—En la misma fecha presente en este Juzgado el testigo ciudadano Miguel Campillo, previas las propias formalidades de la ley, se le tomó la protesta de ley, por lo que ofreció conducirse con verdad en lo que supiere y fuere preguntado y siéndolo al tenor de las preguntas contenidas en el interrogatorio presentado por el Señor Camou, contestó á la 1.^a.—Que se llama como que da dicho, natural de Horcasitas, de sesenta y siete años de edad, vecino de esta ciudad y de ejercicio Agente de Negocios. Á la 2.^a.—que es cierto el contenido de esta pregunta. Á la 3.^a.: que igualmente es cierto el contenido de esta pregunta y á la 4.^a. dijo: que lo expuesto lo sabe por informes que ha tenido y por ser de pública notoriedad los hechos de que se trata, habiendo sido poseidos esos terrenos por los Señores Elias desde el año de mil ochocientos treinta y seis, fecha en que les fueron adjudicados, y despues por los Señores Camou hasta la fecha: que en cuanto al amojonamiento lo sabe tambien por personas fidedignas que conocen bien aquellos terrenos, quienes han informado al declarante estar con las correspondientes mojoneras en todos los ángulos. Y leída que le fué al declarante su anterior declaración, expresó: ser la misma que tiene dada, y en ella se ratificó firmando para constancia con el C. Juez y Promotor Fiscal, por ante el suscrito Secretario.—Doy fe.—Francisco Yrigoyen.—M. Campillo.—Antonio Robles Ramon Martinez.—rúbricas.—En seguida presente ante este Juzgado el testigo José Lino Yberri, previas las mismas formalidades que las anteriores, se le tomó la protesta de ley por la que ofreció conducirse con verdad en lo que supiere y fuere preguntado: y siéndolo al tenor de las preguntas contenidas en el interrogatorio presentado por el Sr. Camou, contestó á la 1.^a.—Que se llama como queda dicho, mayor de cincuenta años, casado, vecino de esta ciudad y de profesión comerciante. Á la 2.^a dijo: Que es cierto el contenido de esta pregunta. A la 325 3.^a. contestó: que es igualmente cierto el contenido de esta pregunta y á la 4.^a. dijo: Que lo expuesto en cuanto á la posesión y amojonamiento de los terrenos de que se trata, lo sabe el declarante por informes de personas fidedignas conocedoras de esos mismos terrenos y demas y demas, por ser de pública notoriedad los hechos referidos.—Y leída que le fué la declaración anterior en ella se ratificó, firmando para constancia con el C. Juez y Promotor Fiscal por ante el suscrito Secretario.—Doy fe.—Fran^{co}. Yrigoyen.—José Yberri.—Antonio Robles. Ramon Martinez.—rúbricas.—Un timbre de cincuenta centavos debidamente cancelado.—C. Juez de Distrito.—José Camou, hijo, en el expediente sobre demasias de los terrenos denominados “Agua Prieta,” “Santa Bárbara,” “Naidenibáachi,” “Agua de Baltazar,” “Lo del Gato,” “Lo de Tomas Romero,” y lo de las “Mesteñas,” ante Ud. previas las protestas respectivas, respetuosamente expongo: que con fecha veintisiete de Octubre

del año próximo pasado, la Secretaria de fomento hizo las observaciones siguientes á dicho expediente: 1°.—Haber encontrado discordancia en entre la propiedad que dedujo el agrimensor, y las que aparecen por las tomas de razon de los títulos: 2°.—De no ser suficientes las pruebas para pedir la rebaja de la mitad del valor del terreno, por razon de falta de posesión de diez años anteriores á la ley de 22 de Julio de 1863.—3°.—Haberse solo encontrado, segun el acta de mensura, dos mojoneras en el terreno, por lo cual tuvo el agrimensor que ir poniendo en el remate de las líneas que media y en los lugares que designaban los títulos unos montones de piedra en señal de mojoneras: 4°.—Que en efecto de este requisito no existe el otro que exige el artículo 5° referente al cultivo del terreno, de lo que resulta que no ha habido derecho para pedir tal rebaja, y por último, que existiendo compañías deslindadoras de baldíos en el Estado, se ignora si las demasias de que se trata, han sido, respetadas aquellas, sobre lo que no existe constancia alguna.—Como resultado de las anteriores observaciones, la Secretaria de Fomento mandó: 1°.—Que el agrimensor rectifique las operaciones que practicó para deducir las demasias; que debo pagar íntegro el valor que resulte, segun la aclaracion que haga el agrimensor, y 3°.—Que se justifique completamente que la adjudicación de que se trata no perjudica los derechos adquiridos por las compañías deslindadoras ó por algun otro motivo, y que por lo tanto dichas demasias están libres para poderlas enagenar.—Por lo que hace á la primera de dichas observaciones, el Señor Ingeniero Lautro Aguirre ha hecho el exámen y operacion correspondientes, de lo que ha resultado una diferencia verdaderamente insignificante, pues en la totalidad de la area superficial aparecen demas cinco aras, ochenta y cinco centiarras, que en nada afecta el valor del terreno por esa diferencia.—La falta de posesión á que se refiere (esa disposicion) la 2ª. observación, queda desvanecida con la informacion que he promovido y por la que consta que desde el año de mil ochocientos treinta y seis, se han poseído los terrenos por los dueños de ellos, que aunque varios, los derechos de unos se han transmitido los otros: de lo que resulta que el veintidos de Julio de mil ochocientos sesenta y tres, ya se tenían mas de los diez años de posesión, exigidos por la ley de esa fecha.—La tercera de las observaciones es la de haberse encontrado, segun acta de mensura, solo dos mojoneras en el terreno.—Esta observación, que á primera vista es poderosa, queda satisfecha, ya por la situacion en que la frontera de nuestro Estado se ha encontrado durante mucho tiempo, con las correrias de los Apaches, ya por la informacion que promoví. En que los habitantes de aquellas regiones siempre estuvieron sin tranquilidad y amenazados con la muerte, lo que hacia que destruidas algunas mojoneras, era difícil reponerlas inmediatamente, pero lo que bien

326 pudieron encontrarse solo dos de ellas al practicarse la mensura, habiendo existido las demas un poco ántes, las que no habian sido reparadas, como lo fueron despues. Y hay que tomar mas en consideración lo expuesto, cuando precisamente el año de mil ochocientos ochenta las invasiones de los Apaches se hicieron sentir como pocas veces, causando la desolación de las partes habitadas de los Distritos fronterizos, como es el de Arizpe.—Las mismas poderosas

razones hay para que los terrenos de que se trata no se hubiese cultivado entónces.—Por lo que toca á la última observación, ya el Juzgado, teniendo sin duda en cuenta los antecedentes sobre el particular, declaró que el terreno adjudicado no está comprendido en ninguna de las concesiones de deslinde en el Distrito de Arizpe. Sin embargo, á mayor abundamiento y para que la Secretaria de Fomento lo tome en consideración á su tiempo, manifiesto que basta ver las fechas de denuncia y las de la mensura para persuadirse de que ese denuncia y la adjudicación decretada en nada puede perjudicar los derechos de las compañías deslindadoras, cuyas concesiones son de fechas muy posteriores. Además las demasías de que se trata han sido respetadas por esas compañías, á quienes he presentado mis títulos y planos respectivos, creo haber demostrado suficientemente que los terrenos han sido poseídos mas de diez años en el sentido de la ley de 22 de Julio de 1863, y que se han tenido amojonados, lo que me da derecho á la rebaja de la mitad del valor de dichos terrenos, conforme al artículo 5º. de la citada ley.—Por lo expuesto y estando satisfechas las observaciones de la Secretaria de Fomento, á Ud. pido se sirva mandar agregar al expediente este escrito y sacar testimonio de todo lo practicado con motivo de dichas observaciones, para remitirlo directamente á aquella Secretaria, á fin de que resuelva lo que proceda en justicia.—Guaymas, Enero 13 de mil ochocientos ochenta y ocho.—José Camou, hijo.—rúbrica.—Presentada en su fecha á las nueve y media de la mañana. Lo anoto. Martinez.—rúbrica.—Guaymas, Enero trece de mil ochocientos ochenta y ocho.—Por presentado el anterior escrito, agréguese á su expediente y como se pide, estando practicada la información solicitada por el Señor José Camou, hijo, y subsanadas las demás observaciones hechas por la Secretaria de Fomento, en su nota relativa fecha veintisiete de Octubre del año de mil ochocientos noventa y siete compúlsese testimonio de las diligencias practicadas con este motivo y remítase á la referida Secretaria de Fomento para su superior resolución. Notifíquese. El Juez 2º. Suplente de Distrito de Sonora en ejercicio así lo mandó y firmó.—Doy fe.—Francisco Yrigoyen. Ramon Martinez.—rúbrica.—En seguida se notificó el anterior auto al interesado, C. José Camou, hijo, y enterado dijo: que lo oye y firma. Doy fe.—José Camou hijo.—Ramon Martinez.—rúbricas.—En la misma fecha notificado el auto que antecede al C. Promotor Fiscal dijo: que lo oye y firma.—Doy fe. Robles.—rúbrica.—Ramon Martinez.—En la misma fecha se remitió el testimonio á la Secretaria de Fomento en nueve fojas útiles. Conste.—Martinez.—En once de Abril de mil ochocientos noventa y ocho, se expidió testimonio al interesado. Conste. rúbrica.—Nueve timbres que forman la suma de cuatro pesos veinticinco centavos debidamente cancelados.—Recibi del Juzgado de Distrito el título de propiedad expedido por el Presidente de la República, con fecha treinta de Enero del corriente año de las demasías de los terrenos "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" y lo de las "Mesteñas," en el Distrito de Arizpe, cuya superficie es de 84,236.47 y cuyo título ha sido expedido á

mi favor.—Guaymas seis de Abril de mil ochocientos
 327 ochenta y ocho.—J. P. Camou.—rúbrica.—Un sello que dice:
 República Mexicana.—Jefatura de Hacienda en Sonora.—
 Certificado Numero 387.—El Jefe de Hacienda en el Estado de So-
 nora, certifico: que á fojas sesenta y seis del libro 2°. general de
 caudales de esta Jefatura de Hacienda correspondiente al año fiscal
 actual obra una partida del tenor siguiente: 1888.—Abril 1°.—A C.
 de Y.—Número 24.—Producto dela venta de terrenos baldios—
 Cuatro mil doscientos treinta y seis pesos cuarenta y siete centavos,
 que por conducto de su apoderado enteró en esta oficina el C. José
 Camou, hijo, por importe de las demasias de sus terrenos llamamos
 "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua de Bal-
 tazar," "Lo del Gato," "Lo de Tomas Romero," y lo de las "Mes-
 teñas," sitios en el Distrito de Arizpe de este Estado, cuyo entero fué
 hecho en la forma siguiente:

Para el Erario federal en certificados de alcances	\$2,118.24c.
Para el erario del Estado en efectos y bonos.....	2,118.23"

Billete número 397.....	\$4,236.47c.
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Y para constancia se expidió el presente en Guaymas á primero de
 Abril de mil ochocientos ochenta y ocho.—El Jefe de Hacienda.—
 Suarez, M.—rúbrica.—Un sello que dice: República Mexicana.—
 Jefatura de Hacienda en Sonora, No. 2090.—Tengo el honor de re-
 mitir á Ud. el título de propiedad de las demasias de los terrenos
 llamados "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua
 de Baltazar," "Lo del Gato," "Lo de Tomas Romero," y lo de las
 "Mesteñas," sitios en el Distrito de Arizpe, adjudicados á favor del
 Sr. D. José Camou, hijo, á fin de que de acuerdo con lo prescrito en
 el artículo 19 de la ley de 22 de Julio de 1863, se sirva entregar al
 interesado y mande darle posesión en virtud de haber pagado el
 valor de dichas demasias y él de las estampillas fijadas en el título,
 segun lo aviso á ese Juzgado en mi diverso oficio de esta misma
 fecha.—Suplico a Ud. se sirva acusarme recibo de la presente.—
 Libertad y Constitución. Guaymas, Abril cuatro de mil ochocientos
 ochenta y ocho.—El Jefe de Hacienda. Suarez—rúbrica.—Al Juez
 de Distrito.—Presente.—Un sello que dice: República Mexicana.—
 Jefatura de Hacienda en Sonora.—Núm° 2089.—Tengo el honor de
 remitir á Ud. el certificado de entero que justifica el pago que ha
 hecho el ciudadano José Camou, hijo, de las demasias de sus terrenos
 llamados "Agua Prieta," "Santa Bárbara," "Naidenibácachi," "Agua
 de Baltazar," "Lo del Gato," "Lo de Tomas Romero" y lo de las
 "Mesteñas," sitios en el Distrito de Arizpe, adjudicados á su favor,
 manifestando á Ud. á la vez que el importe de las estampillas fijadas
 en el título que le fué expedido ha sido tambien satisfecho por el
 interesado.—Libertad y Constitución. Guaymas, Abril cuatro
 de mil ochocientos ochenta y ocho.—El Jefe de Hacienda.—
 Suarez.—rúbrica.—Al Juez de Distrito.—Presente.—Un sello que
 dice: Secretaria de Fomento, Colonización, Industria y Comercio.—
 México.—Sección 1°.—Departamento de Terrenos Baldios.—N.
 895.—Queda en esta Secretaria con el oficio de Ud. fecha seis del



actual la copia certificada del recibo del título expedido á favor del ciudadano José Camou, hijo. Libertad y Constitución. México, Abril catorce de mil ochocientos noventa y ocho.—P. o. d. S., M. Fernandez.—O. M., rúbrica.—Al Juez de Distrito del Estado de Sonora. Guaymas.

Es copia fiel y exacta del expediente original que obra en el archivo de este Juzgado de Distrito. Va confrontada y cancelados los timbres respectivos y que se expide en cumplimiento de lo mandado por auto de veintidos de Febrero del corriente año dictado en el expediente promovido en solicitud de dichas copias por el C.

328 Procurador de los Estados Unidos de América para la Corte de Terrenos. Lo que certifico como Secretario interino del Juzgado de Distrito en el Estado de Sonora en Guaymas de Zaragoza, á ocho de Marzo de mil ochocientos noventinueve.

GUILLERMO P. COTA. [RUBRICA.]

(Form No. 88.)

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES,

March 11th, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mexico, do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mexico, this day and year next above written, and of the Independence of the United States the 124th.

FRANK M. CROCKER,

U. S. Consular Agent.

[SEAL.]

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk,*

By ———, *Deputy.*

(Here follows diagram marked page 329.)

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3rd copy.

Agua Prieta, etc. Case No. 5.

Translation of Defendants' Exhibit A.

Testimonio of the expediente of denouncement of a tract of land situated in the district of Hermosillo made by Mr. Jose Camou, Son.

Total area.....	68.9 sitios
Area covered by title	28.7 "
Demasias.....	40.2 "

331 On the margin a fifty-cent stamp duly canceled.

Citizen district judge:

I, Jose Camou, Son, in the manner and form most conformable to law, state to you: that I am the owner in fee of certain lands on the northern frontier of this State and in the district of Arizpe, known by the names of "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" and "Lo de las Mesteñas," the boundaries of which are those set out in their titles which I will present at the proper time, and as it is to my interest to acquire the overplus (demasias), if there should be any, after survey, I denounce it in due form protesting that I will make the proper payments in the terms designated by the law on the matter, and requesting you to be pleased to appoint as surveyor citizen Florencio Rosas. I do not act in bad faith, I protest it.

Hermosillo, April 22, 1880.

JOSE CAMOU, Son.

I state further: That in view of the great distance and natural difficulties of the present season, the court under your very worthy charge will be pleased to grant me ample time for the survey.

Date as above.

JOSE CAMOU, SON. [RUBRIC.]

Guaymas, April 24, 1880.—On the date noted the present denouncement was received. Attest.

Guaymas, May 31, 1880.—Presented with the general power of attorney accompanying it, take note thereof and return it to the party in interest. The denouncement to which the foregoing
 332 petition refers is admitted without prejudice to a third party who may have a better right. Consequently the surveyor, citizen Florencio Rosas, is appointed to proceed, after his acceptance and oath, which he will take before the citizen second judge of first instance of Hermosillo to whom an order with the necessary clauses for the purpose will be addressed, after citation of the adjoining owners and presence of their titles, to the resurvey and making of the maps of the lands called "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas

Romero," and "Lo de las Mesteñas," situated on the northern frontier of the State and in the district of Arizpe, the overplus (demasias) of which are petitioned for by the owner of said lands, taking special care to make the resurvey of each one of said lands separately, you will be pleased to designate both in the minutes of survey and on the several maps the overplus (demasias) each one may contain according to their corresponding property titles, which you will have at hand when you perform your operations, and you will subject yourself in your proceedings to the laws of July 20 and August 2, 1863, forwarding the original proceedings you may execute to this court for further action on the same, the attorney of the denouncer being cautioned that if within ninety days counted from this date he does not present the proceedings ordered executed the present denouncement will be declared abandoned.

The first alternate district judge in the State in charge of the office ordered and signed with ordinary attending witnesses in default of a secretary.

MORAN. [RUBRIC.]

Witness:

E. FONTES.

Witness:

— — —.

333 Thereupon notice of the foregoing order was given to the attorney in this matter, citizen Juan P. M. Camou, who when acquainted therewith said: That he hears it and signed it.

J. P. M. CAMOU. [RUBRIC.]

Witness:

E. FONTES.

Witness:

— — —.

On the same date the order made in the foregoing decree was issued. Attest.

On the same date I certify that I have seen, read and returned to the party in interest a full power of attorney executed by Mr. Jose Camou, Son, in favor of citizen Juan P. M. Camou, in Hermosillo, dated on the 4th of the current month, before the national notary public, Matias Moran; it contains all the clauses necessary in those of its character and besides the special one for denouncing public lands and for petitioning for the survey and betterment of those owned by the principal. It is declared to be sufficient in this city under date of the 22nd of the current month by citizen Licentiate Jesus Maria Gaxiola and has the corresponding stamps duly canceled. Which I enter as a minute.

MORAN. [RUBRIC.]

Guaymas, August 17, 1880.—The proceedings of survey which are aggregated having been received, in compliance with article 16 of the law of July 20, 1863, inquire of the office of the chief of the treasury if the public treasury is in possession of the land denounced,

for which purpose these proceedings will be forwarded to it. The district judge *ad interim* ordered and signed it. I attest.

334 MONTEVERDE. [RUBRIC.]
 MANUEL ALTAMIRA ALAS. [RUBRIC.]

Thereupon, the attorney of the denouncer being present and being acquainted with the foregoing order, he said: That he hears it, is satisfied and signed it. I attest.

J. P. M. CAMOU. [RUBRIC.]
MANUEL ALTAMIRA ALAS. [RUBRIC.]

The order was complied with. Attest.

On the margin a seal which reads: Office of the chief of the treasury, Guaymas, State of Sonora.

Citizen district judge:

There being in the office under my charge no register of the public lands of which the public treasury is in possession, it does not know, for that reason, whether that to which the foregoing order refers is or is not in that condition.

Guaymas, August 19, 1880.

LUIS VIXANTON. [RUBRIC.]

Received the 21st of August. Attest.

GUAYMAS, September 1, 1880.

As it does not appear, from the foregoing report, that the public treasury is in possession of the land denounced, in conformity with article 17 of the law of July 20, 1863, publish said —.

Two stamps of fifty cents each duly canceled.

Antonio Moran, first alternate district judge in the State:

335 To you, citizen second judge of first instance of the district of Hermosillo, I make known: That in a petition presented in this court by Don Jose Camou, Son, denouncing the overplus (*demasias*) of the lands of his property called "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua del Baltazar," "Lo del Gato," "Lo de Tomas Romero" and "Lo de las Mestefias," situated in the districts of Fronteras and Arizpe, the following order has been made:

Guaymas, May 31, 1880.—Presented with the general power of attorney accompanying it, take note thereof and return it to the party in interest. The denouncement to which the foregoing petition refers is admitted without prejudice to a third party who may have a better right. Consequently the surveyor, citizen Florencio Rosas, is appointed to proceed, after his acceptance and oath, which he will take before the citizen second judge of first instance of Hermosillo to whom an order with the necessary clauses for the purpose will be addressed, after citation of the adjoining owners and presence of

their titles, to the resurvey and making of the maps of the lands called "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated on the northern frontier of the State and in the district of Arizpe, the overplus (demasias) of which are petitioned for by the owner of said lands, taking special care to make the resurvey of each one of said lands separately, you will be pleased to designate both in the minutes of survey and on the several maps the overplus (demasias) each one may contain according to their corresponding property titles, which you will have at hand when you perform your operations, and you will subject yourself in your proceedings to the laws of July 20 and August 2, 1863, forwarding the original
 336 proceedings you may execute to this court for further action on the same, the attorney of the denouncer being cautioned that if within ninety days counted from this date he does not present the proceedings ordered executed the present denouncement will be declared abandoned.

The first alternate district judge in the State in charge of the office ordered and signed with his attending witnesses.

MORAN.

Witness :

FONTES.

Witness :

G. RODRIGUEZ.

The petition referred to is the following :

Citizen district judge :

I, Jose Camou, Son, in the manner and form most conformable to law, state to you : That I am the owner in fee of certain lands on the northern frontier of this State and in the district of Arizpe, known by the names of "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," the boundaries of which are those set out in their titles which I will present at the proper time, and as it is to my interest to acquire the overplus (demasias), if there should be any, after survey, I denounce it in due form protesting that I will make the proper payments in the terms designated by the law on the matter, and requesting you to be pleased to appoint as surveyor citizen Florencio Rosas. I do not act in bad faith, I protest it.

Hermosillo, April 22, 1880.

JOSE CAMOU, Son.

And that what I have commanded in the order inserted may have its due compliance, in the name of the justice of the Union, I exhort and require you, praying you on my part that as soon
 337 as you receive the present order, you cause it to be observed and complied with delivering it to the surveyor appointed

after his acceptance and oath for the discharge of the commission that is conferred upon him.

It is given in Guaymas de Zaragoza, May 31, 1880.

ANTONIO MORAN. [RUBRIC.]

Witness:

E. FONTES.

Witness:

G. RODRIGUEZ.

Received in Hermosillo, the 8th of June of said year. Attest.

Hermosillo, June 8, 1880.—Summon to this court citizen Florencio Rosas and make known to him the appointment referred to in the foregoing order and after his acceptance and oath deliver the present instrument to him for compliance therewith. The second judge of first instance ordered and signed it with attending witnesses.

D. GONZALEZ. [RUBRIC.]

Witness:

M. URCHURTU.

Witness:

RAMON DURAN. [RUBRICS.]

A one-dollar stamp duly canceled.

On the same day Mr. Florencio Rosas being notified of the foregoing decree and order, said: That he hears it and accepts the commission that is conferred upon him, protesting to discharge it faithfully, he signed.

GONZALEZ. [RUBRIC.]
FLORENCIO ROSAS. [RUBRIC.]

Witness:

M. URCHURTU.

Witness:

RAMON DURAN. [RUBRICS.]

Thereupon these proceedings on three written leaves were delivered as is ordered. Attest.

338 Hermosillo, June 9, 1880.—As ordered in the order of the citizen district judge in Sonora, summon the party in interest, Jose Camou, Son, the adjoining owners, Jose Maria Elias, the municipal president of the towns of Fronteras and Cuquiárachi, also the surveyor general of the Territory of Arizona (United States), to be present in person or by attorneys, at the place called "Agua Prieta," on the 28th day of the present month, to defend the boundaries of their properties in view of their titles, in the survey that will be made on that and the following days. I, the surveyor commissioned, so determined and signed it with attending witnesses.

FLORENCIO ROSAS. [RUBRIC.]

Witness:

C. ECHEVARRIA.

Witness:

TEODORO YSLAS. [RUBRICS.]

On the ground at Naidenibáachi, Agua Prieta, Santa Barbara, Mesteñas, on the 28th day of the month of June, 1880.—The undersigned surveyor, the party in interest, represented by Mr. Pascual Camou according to letter of attorney brought with him, the municipal president of the towns of Fronteras and Cuquiárachi, attending witnesses and several assistants in the survey, it was made known to them that the survey or resurvey would be commenced from the north cardinal monument of Agua Prieta, because that one was well known, and the titles refer to it as a small hillock (lomita pequeña) situated in the valley of the Agua Prieta toward the east and a pile of stones is found on its summit or its highest point, and, there being no opposition whatever, the course $N. 79^{\circ} 03' E.$ was observed and there were measured thirteen thousand and ten meters (13,010) to the summit of Gallardo hill (cerro) in Saddle pass, which the titles call for. A monument was found at the north base of said hill (cerro) and serves as a division between the Republic of Mexico and that of the United States.

339 Thence on a straight line along the whole of the Perrillo mountains course $S. 3^{\circ} 41' E.$ there were measured fourteen thousand and fifty-one (14,051) meters to a small, low, rocky hillock (lomita) at the base of said mountain, where a pile of stones was made, as the old monument was not found. Thence, following the perimeter the titles indicate, an observation was made $S. 79^{\circ} 03' W.$ and there were measured eight thousand one hundred and three meters (8,103) to the monument at the willows the titles call for and on a hillock (loma) close to said willows a pile of stones was formed to serve as a provisional monument, which should be placed in the willows. Thence the line was run $S. 23^{\circ} 46' W.$ and there were measured fifteen thousand one hundred and eighty-seven meters (15,187) which terminated on a table-land (mesa) which the titles describe as large, facing toward the north the last clump of cottonwood trees on the arroyo of Santa Barbara, on which mesa or chain of hills (cordones) a pile of stones was made as a mark for a monument, and leaving the survey for the following day this entry was closed.

On the following day the said same persons having assembled and for the purpose of continuing the resurvey from the monument facing the last clump of cottonwood trees, being at that place, an observation was made $S. 16^{\circ} 48' E.$ and there were measured nineteen thousand six hundred and sixty-five (19,665) meters which terminated at the monument of the commons (ejidos) of the town of Fronteras, on a small, low, long hillock (lomita), where a post in a pile of stones was placed. Thence the line was run to the small peaks (picachitos), because the monument was not found, south and close to them, and there were measured six thousand four hundred and eighty-four (6,484) meters which terminated on the highest point of the southernmost peak, being bound at that place by the commons of Cuquiárachi. Thence an observation was made $S. 67^{\circ} 12' W.$ and there were measured seventeen thousand one hundred and twenty-seven (17,127) meters which terminated on the other side of the canyon of the Jurivana and on the highest

point of the mountain of the same name a monument was ordered placed. Thence course north nineteen thousand seven hundred (19,700) meters to the Magallanes hill (cerro) which the titles call for. Thence course N. $23^{\circ} 59'$ W. twenty-five thousand eight hundred and thirty-nine (25,839) meters to the road from Fronteras on a mesa close to a basin and there being no monument one was made. Thence to the point of beginning the last line of the perimeter of the figure of the land was determined and as shown on the map herewith its course is N. 71° E., length twenty-nine thousand six hundred and seventy-six (29,676) meters, with which the survey closes, said lands being bounded on the north by the Territory of Arizona, on the south by the commons of the town of Cuquiáachi and on the east by those of Fronteras and finally on the west by the lands of San Pedro belonging to citizen Jose Maria Elias. The monuments at the angles of the tract of land are the same ones the titles describe, there being considerable excess in some of the lines, due to the hostile Apaches at that epoch, the surveyor being guided by an erroneous calculation which most of the time was vicious.

The figure being closed by the measurements indicated, and the necessary calculations being made, it was found that there resulted therefrom one hundred and twenty-one thousand and twenty-two hectares (121,022), seven ares and eighty-three centiares, from which segregating fifty thousand four hundred and fourteen hectares, sixteen ares and ninety-seven centiares, which the titles call for, there remain or are overplus (demasias) seventy thousand six hundred and seven hectares, ninety ares, and eighty-six centiares (70,607—90—86) in all directions with which the resurvey of said lands was concluded.

341 In general the lands are broken, with considerable pasture and timber, the maguey plant is abundant, and it contains some watering places, the principal ones being Santa Barbara, and Agua Prieta. The declination of the needle observed on this date was $11^{\circ} 45'$ E. and the azimuths of the lines were observed from the magnetic meridian. The adjoining owners who were present and the parties in interest were satisfied with what had been done. The municipal president of the towns mentioned presented me an official statement of their satisfaction, which is aggregated to the proceedings. I certify.

PASCUAL CAMOU. [RUBRIC.]
FLORENCIO ROSAS. [RUBRIC.]

Witness:

FRANCISCO VERDUGO.

Witness:

MANUEL VERDUGO. [RUBRICS.]

Hermosillo, July 22, 1880.—The proceedings of survey of the lands of Naidenibáachi, Santa Barbara, Agua Prieta, Baltazar, being concluded, transmit them to the district court for further action on the same. Attest.

On the margin a one-dollar stamp duly canceled.

HERMOSILLO, *June 12, 1880.*

Mr. Pascual Camou, Tucson.

ESTEEMED UNCLE: It being necessary to make the survey of the lands I hold on the northern frontier of this State, known by the names of "Agua Prieta," "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero" and "Lo de las Mesteñas," by virtue of a formal denouncement I have made of their overplus (demasias) and not being able to be present at this survey on account of business which prevents my going, by these presents I confer on you all my power and authority that you may, in representation of my own rights and interests, accompany the surveyor who has been appointed, citizen Florencio Rosas, and in the execution of said surveys to represent my person in and for everything, with the understanding that whatever you do and execute in favor of my rights in this matter I will approve obligating therefor my responsibility and my present and future property.

With nothing further I am, as ever, your affectionate nephew and obedient servant,

JOSE CAMOU, Sox.

Witness:

Y. HAGUNO. [RUBRIC.]

Witness:

S. J. ROBLES. [RUBRIC.]

Municipal council of the towns of Fronteras and Cuquiárachi.

Having been present at the resurvey of the lands called "Agua de Baltazar," "Mesteñas," "Tomas Romero," and "gato," which said surveys, by order of the citizen district judge in Sonora, were ordered made by the commissioned surveyor, citizen Florencio Rosas, this council has thought proper, in virtue of having been satisfied with said survey, in behalf of said towns, to state it officially to said commissioned surveyor, for the necessary purposes.

Liberty and constitution. Fronteras, July 5, 1880.

J. ESCALANTE.

To citizen surveyor commissioned for the survey of the lands, Agua de Baltazar, etc., present.

343 On the margin a fifty-cent stamp duly cancelled.

Publish said denouncement by means of edicts, which will be done three consecutive times in the official periodical of the State so that those who consider themselves with a better right to it may present themselves in this court to establish them within thirty days counted from the first publication and should they not do so, the overplus (demasias) stated in these proceedings will be adjudicated. The district judge *ad interim* in Sonora thus ordered and signed it. I attest.

MONTEVERDE.

MANUEL ALTAMIRA ALAS. [RUBRIC.]

On the same date of the foregoing order notice of it was given to the attorney of the denouncer and when he was acquainted with it he signed it. I attest.

J. M. P. CAMOU.

MANUEL ALTAMIRA ALAS. [RUBRIC.]

On the same date there was ordered published in the official periodical of the State the following

Edict.

Those who believe themselves with a better right to the overplus (demasias) of the ranchos called "Agua Prieta," "Santa Barbara," "Naidenibáachi," "Agua del Baltazar," "Lo del Gato," "Lo de Tomas Romero" and "Lo le las Mesteñas," situated in the district of Arizpe, denounced by their owner, Jose Camou, Son, will present themselves in this district court, in person or by attorneys instructed and paid, to establish their rights within thirty days counted from the first publication of the present edict and if they do not
344 do so within the term already fixed, said overplus (demasias) will be adjudicated to the denouncer. Which I enter as a minute.

MANUEL ALTAMIRA ALAS. [RUBRIC.]

GUAYMAS, July 7, 1887.

The adverse suit brought against this denouncement by citizen Plutarco Elias, for himself and in representation of his mother and brothers, having been now concluded and the corresponding edicts already published in the official periodical, "La Constitucion," in September, 1880, forward these proceedings to the office of the chief of the treasury to compute the liquidation of said lands according to the tariff in force at the time it was admitted. The district judge decreed and signed it. I attest.

MONTEVERDE.

RAMON MARTINEZ. [RUBRIC.]

On the same date the attorney of the party in interest being notified of the foregoing order said: That he hears it and signed. I attest.

RAMON MARTINEZ.

J. P. M. CAMOU. [RUBRIC.]

Thereupon the order was complied with Attest.

MARTINEZ.

Liquidation which This Office Makes of the Value of the Land Denounced and Surveyed in These Proceedings.

Value of 70,607 hectares, 90 ares and 86 centiares at 12 cents per hectare, according to the tariff of 1880..... \$8,472.94c.

345 The payment must be made in this manner :

To the federal treasury in cash.....	\$2,824.31c.
To the federal treasury in bonds.....	1,412.16c.
To the State treasury in cash.....	2,824.31c.
To the State treasury in certificates.....	1,412.16c.
Sum	\$8,472.94

Guaymas, July 13, 1887.

The chief of the treasury.

CONRADO CHARRAY. [RUBRIC.]

A seal which says: Office of the chief of the treasury in Sonora.

GUAYMAS, July 15, 1887.

Forward these proceedings to the promotor fiscal to ask in conformity or rejection. The district judge decreed and signed it. I attest.

MONTEVERDE.

RAMON MARTINEZ. [RUBRICS.]

On the same date the promotor fiscal, when notified of the foregoing order, said : That he hears it, and that in order to make a request he asks the court to be pleased to order note made of the corresponding title and after that is done he requests these proceedings be forwarded and signed. I attest.

ROBLES.

RAMON MARTINEZ, [RUBRIC.]
Secretary.

On the same date I certify that I have seen and returned to the party in interest a title for the grant of eighteen sitios, twelve and a half caballerias of land comprised in the places called
346 "Agua Prieta," "Naidenibácachi," and "Santa Barbara," in the jurisdiction of the presidio of Fronteras. Said title was issued at the capital at Arizpe under date of December 28, 1836, by the treasurer general of the department of Sonora, in favor of Messrs. Jose Juan, Jose Maria and Manuel Elias and their mother Mrs. Guadalupe Perez de Elias in favor of Messrs Camou Brothers, in virtue of which these gentlemen remained as owners of said lands, and finally I certify that I have seen the contract of dissolution of the firm Camou Brothers, in virtue of which and according to clause 4th of said contract, Mr. Jose Camou, Son, remains as absolute owner of said lands, which is entered in due testimony thereof.

LICENTIA TE MONTEVERDE.

J. P. M. CAMOU. [RUBRICS.]

On the same date the foregoing note having been made, this data is forwarded to the citizen promotor fiscal for the purposes of the preceding order. Attest.

MARTINEZ. [RUBRIC.]

Guaymas, August 5, 1887.—The foregoing information obtained by the citizen judge of first instance of the district of Guaymas having been received, aggregate it to the corresponding proceedings and as it appears that the denouncer has been and is in possession of this overplus (demasias) for the time prefixed by the law, as that land is monumented, he is entitled to a reduction of half of the price as provided in article 5 of the law on public lands, so that in consequence I return these proceedings to the office of the chief of the treasury that he may in this sense reform his liquidation. The district judge thus decreed and signed it. I attest.

347

MONTEVERDE.

RAMON MARTINEZ. [RUBRIC.]

On the same date Mr. J. P. M. Camou, when notified, said: That he hears it and signed. I attest.

RAMON MARTINEZ.

J. P. M. CAMOU. [RUBRICS.]

On the same date the order was complied with. Attest.

MARTINEZ.

Corrected Liquidation which This Office Makes of the Value of the Land Denounced and Surveyed in These Proceedings.

Value of 70607 hectares, 90 ares and 86 centiares at 12c. per hectare according to the tariff of 1880. The half of the value of the land is deducted because the denouncer is entitled to the privilege granted by article 5 of the law on public lands. Net..... \$4,236.47c.

The payment must be made in this form :

To the federal treasury in cash.....	1,412.16c.
To the federal treasury in bonds.....	706.07
To the State treasury in cash.....	1,412.16c.
To the State treasury in certificates.....	706.07
	<hr/>
	\$4,236.47

Guaymas, August 6, 1887.

The chief of the treasury :

CONRADO CHARRAY. [RUBRIC.]

348 A seal which reads : Republic of Mexico, office of the chief of the treasury in Sonora.

August 8, 1887.—I certify that I have seen on this date and returned to the party in interest a title for the grant of ten sitios, the third part of another and the fifth part of a cabal-

leria for breeding large stock and horses comprised in the places of the names of: "Agua del Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mestefias," issued at the capital at Arizpe on the 28th day of the month of December, 1836, authenticated by Jose Maria Mendosa, as treasurer general of the department of Sonora. There is also a statement in this same document that its just price was paid and at the end of it the following note:

A seal which reads: Department of public works, colonization and industry, Mexico, 10 July, '86.

Revised and revalidated according to the superior order of the executive of the Republic, date 6th of July of the present year.

Mexico, July 10, 1886.

MANUEL FERNANDEZ. [RUBRIC.]
Chief Clerk.

I also certify that I have seen at the end of the title of which note has been taken, on the back of leaf 12, another note of the following tenor:

A seal which reads: Department of public works, colonization and industry, Mexico, 10 July, '86.

Revised and revalidated in accordance with the superior order of the executive of the Republic, date 6th of July of the present year.

Mexico, July 10, 1886.

MANUEL FERNANDEZ. [RUBRIC.]
Chief Clerk.

349 Which I enter as a minute signing with the attorney of the party in interest. I attest.

MONTEVERDE.

J. M. CAMOU.

RAMON MARTINEZ. [RUBRICS.]

A seal which reads: Court of first instance of the district of Arizpe.

Having taken the information which, under date of the 12th instant, solicited Mr. Juan P. M. Camou in this court as representative of his brother, Jose Camou, Son, I remit the respective proceedings to you on four written leaves.

Liberty and constitution. Arizpe, July 28, 1887.

J. PUJOL. [RUBRIC.]

To the district judge in the State, Guaymas.

A fifty-cent stamp duly canceled.

Citizen district judge:

I, Juan P. M. Camou, as the due representative of my brother, Jose Camou, Son, state to you as appears best: That it is to the interest of my principal to prove to that court under your worthy charge the possession for more than ten years in which he has been

and still is of the overplus (demasias) of the lands denominated "Agua Prieta," "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated in the district of Arizpe in this State, for the purpose of obtaining the reduction referred to in article 5 of the law on the occupation and disposition of public lands. With this object I apply to you with the request that you issue a formal order to the judge of first instance of said district of Arizpe to examine, after legal formalities and in the presence of the employee who may be named by the promotor fiscal, the citizens Leonardo Gamez, Jesus Aguirre and Rafael Barrera, Ignacio Elias, upon the accompanying interrogatory, and as it is known to that court that my principal is the owner of the aforesaid lands under the titles exhibited in the adverse suit now terminated, brought by Mr. Plutarco Elias, mother and brothers, I request that it be so stated in the order I am requesting. Upon this statement I pray you to decree in conformity because it is justice.

Guaymas, July 12, 1887.

J. P. M. CAMOU. [RUBRIC.]

Received July 12th of the current year at four p. m. with the accompanying interrogatories. Attest.

MARTINEZ. [RUBRIC.]

Guaymas, July 12, 1887.—This original application, together with the accompanying interrogatories, is forwarded to the judge of first instance of the district of Arizpe to summon the employee appointed by the promotor fiscal and to take the declaration of the witnesses asked for in said petition, returning it to this court for the purposes of the law, together with the proceedings they may execute. The district judge decreed and signed it. I attest.

LICENTATE MONTEVERDO.

RAMON MARTINEZ. [RUBRICS.]

On the third of said month Mr. J. P. M. Camou, when notified, said: That he hears it and signed. I attest.

RAMON MARTINEZ.

J. P. M. CAMOU. [RUBRICS.]

On the same date the promotor fiscal, when notified, said: That he hears it and that he designates the collector of internal revenue at Arizpe to be present at the examination of the witnesses. This he stated and signed. I attest.

ROBLES.

RAMON MARTINEZ. [RUBRICS.]

On the same date this petition and the interrogatories were transmitted to the judge of first instance of the district of Arizpe. Attest.

MARTINEZ.

A seal which reads: Court of first instance of the district of Arizpe.

Arizpe, July 21, 1887.—These proceedings being received, comply with the order of the district judge, summon for the purpose the

witnesses named by the petitioner and the deputy collector of internal revenue, which proceedings will take place today at ten in the morning. When completed return them to the court from which they came. We attest.

J. PUJOL. [RUBRIC.]

Witness:

CIQUEROS.

Witness:

F. MIRAMON.

Thereupon the summonses were issued. Attest.

352 On the same date, at the hour set, the witness, Jesus Aguirre, and the deputy collector of internal revenue, Mr. Francisco J. Acuña, being present in this court, the lawful oath was administered to the first and when questioned as to his general qualification, stated: That his name is what he has stated, that he is thirty-two years of age, married, an employee and a resident of this place, it resulting therefrom that he is not included in the final points of article 747 of the Code of Civil Procedure. Questioned on the second point of the interrogatory presented, he said: That the contents of the question are true. To the third point he answered: That the contents of the question are also true. To the fourth point he answered: That he knows what is said because he knows the lands mentioned and has seen the monuments referred to and knows of a certainty that Mr. Camou has been and is in possession of them. His declaration being read to him he ratified and signed it, the collector stating in this minute that he had no objection to offer to the witness. We attest.

F. PUJOL.

F. SIQUEROS. [RUBRICS.]

S. AGUIRRE.

L. GAMEZ.

F. MIRAMON. [RUBRICS.]

A seal which reads: Court of first instance of the district of Arizpe.

A fifty-cent stamp, duly canceled.

Interrogatory upon which are to be Examined Messrs. Leonardo Gamez, Jesus Aguirre, Rafael Barreda, and Ignacio Elias.

1st. State their general qualifications. 2nd. State if it is true that Mr. Camou has, for more than ten years, and is still in possession of the lands denominated "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mestañas." 3rd. State if it is certain that said lands have been and still are marked at least by artificial monuments at all the angles of their perimíeter. 4th. Give the reason for their statement.

Guaymas, July 12, 1887.

J. P. M. CAMOU. [RUBRIC.]

Thereupon the witness, Leonardo Gamez and the collector of revenue Mr. Acuña, being present, the lawful oath was administered to the first and when asked as to his general qualifications, he stated: That his name is as has been stated, that he is thirty-five years of age, married, a merchant, and a resident of this place, resulting therefrom that he is not covered by the final points of article 747 of the Code of Civil Procedure. When asked as to the second question of the interrogatory, he said: That he knows what he has stated because he knows the lands mentioned and that the contents of the question are true. To the third question he replied: That the contents of the question are also true. To the fourth point he said: That he knows what he states because he knows the lands mentioned, as well as the titles and maps of them and has seen the monuments to which the third question refers. When his declaration was read to him he ratified and signed it, Mr. Acuña stating in this minute that he had no objection to offer to the witness. We certify.

F. PUJOL.
LEONARDO GAMEZ.
F. C. ACUÑA. [RUBRICS.]

Witness:
F. SQUEROS.

Witness:
F. MIRAMON. [RUBRIC.]

354 Thereupon the witness, Rafael Barrera and the collector of revenue, Mr. Acuña, being present, the lawful oath was administered to the first and when questioned as to his general qualifications, he said: That his name is what he has stated, that he is fifty-eight years of age, married, a farmer, and a resident of this place, the final points of article 747 of the Code of Civil Procedure not covering him. When the second question of the interrogatory was asked him, he replied: That the contents thereof are true and known to him. To the third, he said: That he knows what he said because he knows the lands mentioned, has been upon them and has seen the several monuments. When his declaration was read to him he ratified and signed it, Mr. Acuña stating in this minute that he had no objection to offer to the witness. We attest.

F. PUJOL.
R. BARRERA.
F. C. ACUÑA.

Witness:
F. SQUEROS.

Witness:
F. MIRAMON. [RUBRICS.]

It is made known that the witness Ignacio E. Elias is not in this town, the date of his return being unknown.

On the 28th of said month these proceedings are returned to the district court as is ordered. Attest.

Guaymas, August 22, 1887.—Having now taken note of the title and overplus (demasias) denounced in these proceedings, forward them again to the promotor fiscal that he may request according to law. The district judge decreed and signed it. I attest.

MONTEVERDE.

RAMON MARTINEZ. [RUBRICS.]

355 On the same date notice of the foregoing order was given to the promotor fiscal and when he was acquainted with it, he said: That he hears it and signed it. I attest.

ROBLES. [RUBRIC.]

On the same date the order was complied with. Attest.

MARTINEZ.

Citizen district judge:

The promotor fiscal says: That he finds these proceedings in condition for decreeing the adjudication in favor of the denouncer.

Guaymas, August 22, 1887.

ANTONIO ROBLES. [RUBRIC.]

Guaymas, August 22, 1887.—Having examined these proceedings of denouncement of the overplus (demasias) of the ranches known by the names of "Agua Prieta," "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mestañas" made by citizen Jose Camou, Son; having examined the map and proceedings of survey made and executed by citizen Florencio Rosas, in strict conformity with the laws of July 22 and August 2, 1863, the report of the office of the chief of the treasury which says that it does not know whether or not the public treasury is in possession of the land denounced and in virtue of which and in compliance with the provision of article 17 of the first of the two laws hereinbefore cited it was ordered published three consecutive times in the official periodical, "La Constitucion," and it appearing that within the term of these edicts

356 opposition was made to the adjudication of this overplus (demasias) by citizen Plutarco Elias, for himself and in representation of his mother and brothers, which suit was terminated adversely to the opponent; having examined the last liquidation of the value of said land made by the office of the chief of the treasury, the statement of the promotor fiscal and everything else set out in these proceedings, this court decrees: 1st. There is adjudicated in possession and without prejudice to a third party who may have a better right, to citizen Jose Camou, Son, the overplus (demasias) of the ranches, "Agua Prieta," "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mestañas," for 70,607 hectares, 90 ares, 86 centiares, seventy thousand six hundred and seven hectares, ninety ares, and eighty-six centiares, which appear from the proceedings of survey and corresponding maps. 2nd. The present adjudication shall have no effect whatever if not first approved by the department of public works to which, through the executive of the

State, a testimonio and copy of the corresponding map will be submitted. 3rd. That the party interested in the land adjudicated shall not be put in possession and that it is not included in any of the commissions or surveys in the district of Arizpe where it is situated, unless first certified by the office of the treasury, in which it appears that he has paid its value and the stamps affixed to the title. The district judge decreed and signed it. I attest.

MONTEVERDE.

RAMON MARTINEZ. [RUBRIC.]

On the same date notice of the foregoing order was given to citizen J. P. M. Camou, and when he was acquainted with it, he said:

That he hears it and signed it. I attest.

357

RAMON MARTINEZ.

JUAN P. M. CAMOU. [RUBRIC.]

On the 24th of the present month a copy of these proceedings were sent to the department of public works through the executive of the State. Attest.

MARTINEZ.

On the 13th of September of the present year another copy of this and of the map was sent as the first went astray in the mail. Attest.

Seal which says: Department of public works, colonization, industry and commerce. Mexico, section 1st. Department of public lands.

On this date the following is stated to the chief of the treasury in that State: The President of the Republic has been pleased to approve the adjudication decreed by the district court in that State in favor of Mr. Jose Camou, Son, for the overplus (demasias) of his lands called: "Agua Prieta," "Santa Barbara," "Naidenibáachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mestefías," situated in the district of Arizpe in that State. In consequence the proper title of property has been issued, which document is sent to you that you may, according to the last instructions dated February 18, 1886, proceed to collect for said land and for the stamps on the paper on which the title is drawn, forwarding it thereafter to the district court so that, in compliance with the provisions of article 19 of the law of July 22, 1863, it may be delivered to the party in interest by said court and order made for the

358 corresponding possession, after proof that payment has been made in full, of which you will also be careful to give timely notice to this department. And I transcribe it to you for your information and the purposes stated therein, in the part corresponding to you.

Liberty and constitution. Mexico, January 3, 1888.

By order of the secretary,

M. FERNANDEZ, [RUBRIC.]

Chief Clerk.

To the district judge, Guaymas, State of Sonora.

A seal which says: Republic of Mexico, government of the free and sovereign State of Sonora.

On 31 written leaves and the corresponding map there was received in this office together with your communication dated the day before yesterday the testimonio of the proceedings of denouncement of the overplus (demasias) of the ranches denominated: "Agua Prieta," "Agua de Baltazar," "Naidenibáachi," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," which are situated in the district of Arizpe, made by their owner, Mr. Jose Camou, Son, having the honor to state to you in reply that said document with the corresponding report is forwarded today to the department of public works for its superior resolution.

Liberty and constitution. Hermosillo, September 15, 1888.

LORENZO TORRES, [RUBRIC.]

EDUARDO CASTAÑEDA, *Secretary*.

To the district judge in the State, Guaymas.

359 Department of public works, colonization, industry and commerce, section 1st. Department of public lands. No. 2874.

Upon examination in this office of the testimonio of the proceedings carried out in that district court in view of the denouncement made by citizen Jose Camou, Son, of the overplus (demasias) of the lands denounced of his property, "Agua Prieta," "Santa Barbara," "Naidenibáachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Las Mesteñas," situated in the district of Arizpe in that State, it has been observed that there is a disagreement between the property deduced by the surveyor and that which appears in the abstracts (tomas de razon) of the titles, for, according to the surveyor, the former is 50,414 hectares, 16 ares, 97 centiares and according to said abstracts it turns out to be 55,680 hectares, 99 ares, 41 centiares, because one of them says that the grant is for 18 sitios, 2½ caballerias which make 32,135 hectares, 91 ares, 92 centiares, and that of the other title states that it covers 10½ sitios and 3½ caballerias which make 23,545 hectares, 07 ares, 49 centiares, all of which sums up the former total and therefore for overplus (demasias) there only appear 65,341 hectares, 8 ares, 42 centiares and not 70,607 hectares, 90 ares, 86 centiares, as the surveyor states. It has also been observed that the proofs upon which to base the granting of the reduction of half the price of the land are not sufficient, for, in the first place, the ten years' possession alleged is from the year 1877 to the 12th of July of the present year, which is the date of the interrogatories, and not that required by article 5 of the law on the matter which clearly states that such possession must have been for ten years at that date, that is, on the 22nd of July, 1863, and in the second place, although it is shown in the testimonio of the information that
360 the land has been monumented at all the angles of its perimeter, this is shown to be false by the report of survey, in which the surveyor states that only two monuments were found, one to the north on the boundary line of the United States, at the point

where he began the survey, and the other to the south, belonging to the commons (ejidos) of Fronteras, for which reason he had to put piles of stones as marks for monuments at the ends of the lines he measured and in the places designated in the titles, and as there is no evidence whatever that, in default of this requirement, the other exists which is required by article 5 in relation to the cultivation of the ground, it results that legally there has been no right to claim the grace of reduction, of the half which said article grants to the possessors who are in those conditions. Finally, as there are companies surveying public lands in that State, it is not known whether the overplus (demasias) in question has been respected by them, for there is no evidence whatever of this in the testimonio examined. In view, then, of all this, the President of the Republic has been pleased to direct that there be said to you: First, that you be pleased to have the surveyor rectify the operations he made to deduce the overplus (demasias) and to state in fine what it is and what is the amount of the property the titles cover. The right to the deduction of the half of the value of the land not being legally shown, you will notify the party in interest that he must pay the full value that results according to the correction made by the surveyor, and third to produce competent proof that the adjudication in question does not prejudice the rights acquired by the companies that are making surveys, or for any other reason, and that therefore said overplus (demasias) is free to be disposed of.

361 Liberty and constitution, Mexico, October 27, 1887.

By order of the secretary,

M. FERNANDEZ. [RUBRIC.]
Chief Clerk.

To the district judge in the State of Sonora, Guaymas.

Guaymas, January 3, 1888.—For legal effects make known to the denouncer the note of observations which precedes, dated October 27, of last year, from the department of public works and action will be taken in view of his reply. The alternate district judge thus ordered and signed it. I attest.

FRANCISCO FIGUEROA.

RAMON MARTINEZ. [RUBRICS.]

On the same date the denouncer being notified said: That in view of the absence of the surveyor who made the survey, he asks the court, if it sees fit, to be pleased to appoint the citizen surveyor Lauro Aguirre, to rectify, in view of the corresponding data, the operations executed by the former, according to the note of observations made known to him; that in regard to the information of witnesses to prove that he who responds is entitled to the reduction of the half of the value of the land denounced, he will take the proper steps, and that he will do the same in regard to the proof required to show that the adjudication in question does not prejudice the rights acquired by the surveying companies or for any other reason. This he stated and signed. I attest.

RAMON MARTINEZ.

JOSE CAMOU, Son. [RUBRIC.]

362 Guaymas, January 3, 1888.—In view of the foregoing reply of the denouncer, the citizen surveyor Lauro Aguirre is appointed to rectify the operations executed by citizen surveyor Florencio Rosas, after his acceptance and oath and consulting the corresponding data set out in these proceedings, in order to deduce the overplus (demasias) in question, which work he will present to this court at the proper time. The second alternate district judge, in charge of the court, thus decreed and signed it. I attest.

FRANCISCO J. YRIGOYEN.

RAMON MARTINEZ. [RUBRICS.]

On the same date, citizen surveyor Lauro Aguirre being present, the foregoing order was made known to him, and when he was acquainted with it he said: that he accepts the appointment conferred upon him and protests that he will discharge his commission faithfully and lawfully according to his best understanding and intelligence, and that he will proceed immediately to correct the defects noted by the department of public works, rectifying the operations executed by citizen Florencio Rosas and signed. I attest.

RAMON MARTINEZ.

LAURO AGUIRRE.

On the margin a fifty-cent stamp duly canceled.

According to the abstract of the titles that cover the lands of Mr. Jose Camou, Son, the areas covered by title are the following: 18 sitios, $12\frac{1}{2}$ caballerias, for one title and $10\frac{1}{2}$ sitios, $3\frac{1}{2}$ caballerias for the other. This makes a total of $28\frac{1}{2}$ sitios, 15.7 caballerias, 363 twenty-eight and one-third sitios, fifteen caballerias and seven-tenths of a caballeria. The legal value of a sitio is one thousand seven hundred and fifty-five hectares, sixty-one ares, (1,755 H. 61 A.) and that of a caballeria is forty-two hectares, seven thousand nine hundred and fifty-three square meters, eleven square centimeters (42 H. 7,953 S. M. 11 S. c/m.) According to these values we have:

For 28 sitios .3333.....	47742 H	2248 S. M.	13 S c/m.
For 15 caballerias .7.....	671	8863	83

Area covered by title.....	50414	1111	96
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Making the reduction for what corresponds to each title we have:

For 18 sitios.....	31600	9800	00
For 12.5.....	534	9413	87

For the first title.....	32135	9213	67
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For 10 sitios .3333.....	18141	2448	13
For 32 caballerias.....	136	9449	95

For the second title.....	18278	1898	08
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So that, whether the reductions be made by parts or for the whole of that covered by title, the same area results as was to be expected.

There is a very notable difference between the value obtained by the person who made the reduction in the department of public works and that obtained by me. I proceed to explain the reason for this difference. In the reduction corresponding to the first title the difference is only 22 square meters. This arises from the fact that the person who made the reduction probably used logarithmic

364 tables to make it and it is well known that the logarithmic tables give only the first seven *seven* figures with exactness and those that exceed seven as in the present case are nothing more than approximations. In the reduction corresponding to the second title the difference is very notable and arose from the fact that when making the reduction thirteen sitios were taken instead of ten and for which reason the reduction gave, besides the error from using logarithms, the value corresponding to said three sitios and which is five thousand two hundred and sixty-six hectares, eighty-three ares. These explanations being made the total area results..... 121022 H 0783 S. M.
Area covered by title..... 50414 1112

Overplus (demasias)..... 70607 H 9671 S. M.

So that the overplus (demasias) is seventy thousand six hundred and seven hectares, ninety-six ares, seventy-one centiares.

Guaymas, January 6, 1888.

LAURO AGUIRRE.

Received the 7th of the month of the date. Attest.

MARTINEZ.

A fifty-cent stamp duly canceled.

Citizen district judge:

I, Jose Camou, Son, of lawful age, married, a resident of the city of Hermosillo, State of Sonora, and residing temporarily in this port, reserving opportune and legal protests, state: That on the third of the current month there was made known to me the decision of the department of public works on the denouncement made by me of the overplus (demasias) in the ranches denominated: "Agua Prieta,"

365 "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated in the district of Arizpe in said State, and in compliance with aforesaid resolution it is to my interest to show in legal form that I have been and still am in possession of said overplus (demasias) for more than ten years, and even that they have had and still have the monuments prescribed by the law. In virtue thereof I ask you to be pleased to cause to appear in your presence citizens Manuel Aguayo, Jose Maria Maytorena, Miguel Campillo and Jose Lino Yberri and to examine them with the intervention of the promotor fiscal in the tenor of the accompanying interrogatory. I protest the best good faith.

Guaymas, January 9, 1888.

JOSE CAMOU, SON. [RUBRIC.]

I state further: That the present action and any other I may take in this matter and in others that relate to me the revocation of the full power of attorney I have given to my brother, J. P. M. Camou, is not necessary. Date ut supra.

JOSE CAMOU, SON. [RUBRIC.]

Received on this date an inter-ogatory that accompanied it, at eleven in the morning. Attest.

MARTINEZ. [RUBRIC.]

Guaymas, January 11, 1888.—The present petition together with the accompanying interrogatory having been received, aggregate it to the proceedings, and as requested, with the presence of the citizen promotor fiscal of this court, receive the information that is solicited, and to this end summon citizens Manuel Aguayo, Jose Ma Maytorena, Miguel Campillo and Jose Lino Yberri and take their declarations in the tenor of the aforesaid interrogatory. The
366 second alternate district judge in Sonora in charge of the office so ordered and signed it. I attest.

FRANCISCO YRIGOYEN.

RAMON MARTINEZ. [RUBRIC.]

Thereupon notice of the foregoing order was given to citizen Jose Camou, Son, and when he was acquainted with it, he said: That he hears it and signs it.

JOSE CAMOU, SON.

RAMON MARTINEZ. [RUBRICS.]

A fifty-cent stamp duly canceled.

Interrogatory in the tenor of which are to be examined in lawful manner citizens Manuel Aguayo, Jose M. Maytorena, Miguel Campillo, and Jose Lino Yberri.

1st. State their general qualifications. 2nd. State whether it is true and known to them that the lands denominated "Agua Prieta," "Santa Barbara," "Naidenibáachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated in the district of Arizpe, have been possessed since the year 1836, date of the titles, first by Messrs. Elias, their primitive owners, afterwards by Messrs. Camou Brothers, and then up to date by Jose Camou, Son. 3rd. State whether the aforesaid lands have been protected from the beginning up to date by the monuments prescribed by the law on public lands at all the angles of their perimeter, and that if at any time any of these monuments have been destroyed by barbarous Indians they have been replaced as soon as possible. 4th. Give the reason for their statement.

Guaymas, January 9, 1888.

JOSE CAMOU, SON. [RUBRIC.]

367 On the same date notice of the foregoing order was given to the citizen promotor fiscal and when acquainted with it he said: That he hears it and signs it. I attest.

ROBLES. [RUBRIC.]

RAMON MARTINEZ.

On the same date, after summons of the citizen promotor fiscal, there being present in this court the witness, citizen Ma-uel Aguayo, for the purpose of complying with the order in the foregoing decree, the lawful oath was administered to him under which he offered to speak the truth in so far as he knew and was questioned and being questioned in the tenor of the questions contained in the interrogatory presented by Mr. Camou, he replied to the first: That his name is what he has stated, that he is a native of Sahuaripa in this State, and is a resident of this city, fifty-one years of age, a widower and a miner by profession. To the second he said: That the contents of this question are true. To the third he replied: That the contents of this question are likewise true. To the fourth he said: That he knows what he has stated from information and that it is known to the deponent that the statements in question are matters of public notoriety that the Messrs. Elias had been in possession of those lands since the year 1836, the date on which they were adjudicated and afterwards the Messrs. Camou up to date and in regard to the monuments he also knows about them from trustworthy persons who know those lands well and who have informed the deponent that they have the corresponding monuments at all their angles. And when the foregoing declaration was read to him he said it was the same he had given and he affirmed and ratified it signing with the
 368 judge, the promotor fiscal and the undersigned secretary. I attest.

FRANCISCO YRIGOYEN.
 RAMON MARTINEZ.
 M. AGUAYO. [RUBRICS.]

Thereupon the witness, citizen Jose Maria Maytorena, being present in this said court, after the same formalities as the foregoing the lawful oath was administered to him, under which he offered to tell the truth in so far as he knew and was asked and being questioned in the tenor of the questions contained in the interrogatory presented by Mr. Camou, he replied to the first: That his name is what he has stated, that he is a native and resident of this city, forty years of age, married and a farmer by profession. To the second he said: That the contents of this question are true. To the third: That the contents of this question are likewise certain and true. To the fourth he replied: That he knows what he has stated by information from persons who know the lands in question and because it is a matter of public notoriety that they have been possessed by the Messrs. Elias from the time they were adjudicated in the year 1836 and afterwards by the Messrs. Camou up to date and in regard to the monuments he also knows by information from these same persons that these lands have the corresponding monuments at all their angles. When his foregoing declaration was read to the deponent he ratified and signed it, the citizen judge and promotor fiscal also doing so before the undersigned secretary. I attest.

FRANCISCO YRIGOYEN.
 JOSE MARIA MAYTORENA.
 ANTONIO ROBLES.
 RAMON MARTINEZ. [RUBRICS.]

On the same date the witness, citizen Miguel Campillo, being present in this court, after the same legal formalities, the lawful oath was administered to him, under which he offered to tell the truth in so far as he knew and was questioned and being questioned in the tenor of the questions contained in the interrogatory presented by Mr. Camou, he replied to the first: That his name is what he has stated, that he is a widower, a native of Horcasitas, sixty-seven years of age, a resident of this city and by profession a business agent. To the second: That the contents of this question are true. To the third: That the contents of this question are likewise true, and to the fourth he said: That he knows what he has stated from information he has had and because the facts in question are a matter of public notoriety, those lands having been possessed by the Messrs. Elias from the year 1836, the date on which they were adjudicated, and afterwards by the Messrs. Camou up to date, that in regard to the monuments he also knows from trustworthy persons who know those lands well, who has informed the deponent that they have the corresponding monuments at all their angles. And when his foregoing declaration was read to the deponent he said: That it is the same he has given and ratified it, signing in witness thereof, with the citizen judge and the promotor fiscal before the undersigned secretary. I attest.

FRANCISCO YRIGOYEN.

M. CAMPILLO.

ANTONIO ROBLES.

RAMON MARTINEZ. [RUBRICS.]

Thereupon the witness, Jose Lino Yberri, being present in this court, after the same formalities as the foregoing, the lawful oath was administered to him under which he offered to tell the truth in so far as he knew and was questioned and being questioned in the tenor of the questions contained in the interrogatory presented by Mr. Camou, he replied to the first: That his name is what he has stated, that he is fifty years of age, married, a resident of this city and by profession a merchant. To the second, he said: That the contents of this question are true. To the third he replied: That the contents of this question are likewise true and to the fourth he said: That the statement in regard to the possession and the monuments of the lands in question the deponent knows it from information from trustworthy persons who know said lands and the balance because said facts are matters of public notoriety. And when the foregoing declaration was read to him he ratified it signing, in witness thereof, with the citizen judge, the promotor fiscal and the undersigned secretary. I attest.

FRANCISCO YRIGOYEN.

JOSE YBERRI.

ANTONIO ROBLES.

RAMON MARTINEZ.

[RUBRICS.]

A fifty-cent stamp duly canceled.

Citizen district judge :

I, Jose Camou, Son, in the proceedings on the overplus (demasias) of the lands denominated "Agua Prieta," "Santa Barbara," "Nai-denibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," before you, after the necessary protests, state: That under date of October 27, of last year, the department of public works made the following observations: 1st. That it had found a variance between the property the surveyor deduced and those that appeared from the abstracts of the titles. 2nd. That the proofs were not sufficient upon which to ask the reduction of the half of the value of the land because of lack of possession for ten years preceding the law of 371 July 22, 1863. 3rd.—That only two monuments were found in the execution of the survey, for which reason the surveyor had to put piles of stones as marks for monuments at the end of the lines he measured and in the places designated in the titles. That in default of this requisite the other required by article 5 does not exist, which relates to the cultivation of the ground, from which it results that there has been no right to ask for such reduction, and, finally, as there are companies surveying public lands in the State, it is not known whether the overplus (demasias) in question has been respected by them, as there is no statement on that matter. As a result of the foregoing observations the department of public works ordered: 1st.—That the surveyor rectify the operations he executed to deduce the overplus (demasias); that I must pay the full value that results, according to the explanation the surveyor may make and 3rd.—that it be fully shown that the adjudication in question does not prejudice the rights acquired by the surveying companies, or for any other reason, and that therefore said overplus (demasias) is free to be disposed of. With regard to the first observation, the engineer Lauro Aguirre has made the examination and corresponding operation from which there has resulted a truly insignificant difference, for in the total superficial area there appears an excess of five ares, 85 centiares which in no way affects the value of the land on account of that difference. The lack of possession to which the second observation refers is removed by the information I have procured and by which it is shown that from the year 1836 these lands have been held by their owners, that although they were several, the rights of some have been transmitted to others, from which it results that on the 22nd of July, 1863, they already had more than the ten years' possession required by the law of that date. The third of the observations is that of having found, in the execution 372 of the survey only two monuments on the ground. This observation, which at first sight is forcible, is satisfied first by the situation in which the frontier of our State has been for a long time on account of the incursions of the Apaches, and by the information which I have furnished, in the fact that the inhabitants of those regions were always without tranquillity and menaced with death, which made it difficult, when monuments were destroyed, to

replace them immediately, for which reason it might well be that only two of them were found when the survey was made, the others having been in existence a short time before and not having been repaired as they were afterwards. And this statement must be given greater consideration for precisely in the year 1880 the invasions of the Apaches were felt as they had been but a few times before, as they desolated the inhabited parts of the frontier districts, such as is that of Arizpe. There are the same powerful reasons as to why the lands in question were not cultivated then. In regard to the last observation, the court doubtless taking into account the antecedents in the matter, declared that the land adjudicated is not included in any of the surveying concessions in the district of Arizpe. Nevertheless, in further proof thereof and that the department of public works may take it into consideration at the proper time, I state that it is sufficient to note the date of the denouncement and those of the surveys to be convinced that that denouncement and adjudication decreed can in no way prejudice the rights of the surveying companies, whose concessions are of dates very much subsequent. Besides, the overplus (demasias) in question has been respected by those companies, to whom I have presented my titles and maps. I believe I have sufficiently proved that the lands have been possessed more than ten years in the meaning of the 373 law of July 22, 1863, and that they have had monuments, which gives me the right to the reduction of half of the value of said lands, according to article 5 of said law. From what I have stated and the observations of the department of public works being satisfied, I ask you to be pleased to order this statement aggregated to the proceedings and that a testimonio of all that has been done in view of those observations, be made and sent to that department directly for it to decide what is just.

Guaymas, January 13, 1888.

JOSE CAMOU, SON. [RUBRIC.]

Presented on its date at half past nine in the morning. I note it.
MARTINEZ. [RUBRIC.]

Guaymas, January 13, 1888.—The foregoing statement having been presented, aggregate it to the proceedings and as requested, the information solicited by Mr. Jose Camou, Son, having been taken, and the observations made by the department of public works complied with, in its note relating thereto dated October 27th of the

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year 1897, make a testimonio of the proceedings had for this reason and transmit them to said department of public works for its superior decision. Give notice. The second alternate district judge in Sonora in charge of the office so ordered and signed it. I attest.

FRANCISCO YRIGOEYEN.

RAMON MARTINEZ. [RUBRIC.]

Thereupon notice of the foregoing order was given to the party in

interest, citizen Jose Camou, Son, and when acquainted with it he said: That he hears it and signed it. I attest.

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JOSE CAMOU, Son.

RAMON MARTINEZ. [RUBRIC.]

On the same date notice of the foregoing order having been given to the citizen promotor fiscal, he said: That he hears it and signs it. I attest.

ROBLES. [RUBRIC.]

RAMON MARTINEZ

On the same date the testimonio was forwarded to the department of public works on nine written leaves. Attest.

MARTINEZ.

On the eleventh of April, 1898, a testimonio was issued to the party in interest. Attest.

— — — [RUBRIC.]

Nine stamps making the sum of four dollars and twenty-five cents duly canceled.

Received of the district court the title issued by the President of the Republic, dated January 30th of the current year, for the overplus (demasias) of the lands "Agua Prieta," "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," in the district of Arizpe, the area of which is \$4,236.47c, and the title for which has been issued in my favor.

Guaymas, April 6, 1888.

J. P. CAMOU. [RUBRIC.]

A seal which says: Republic of Mexico, office of the chief of the treasury in Sonora, certificate No. 387.

I, the chief of the treasury in the State of Sonora, certify: That at leaf 66 of General Book No. 2 of the funds of this office of the chief of the treasury, corresponding to the present fiscal year, there is an entry of the following tenor:

1888, April 1st. On account of receipts. No. 24. Proceeds from the sale of public lands, four thousand two hundred and thirty-six dollars, forty-seven cents which was paid into this office through his attorney by citizen Jose Camou, Son, being the value of the overplus (demasias) of the lands, "Agua Prieta," "Santa Barbara," "Naidenibácachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated in the district of Arizpe in this State, which payment was made in the following form:

For the federal treasury in certificates of dues.....	\$2,118.24c.
For the State treasury in cash and bonds.....	2,118.24c.

Certificate No. 397.....	\$4,236.47c.
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And in witness thereof the present certificate is issued in Guaymas on the first of April eighteen hundred and eighty-eight.

The chief of the treasury :

SUAREZ, M. [RUBRIC.]

A seal which says: Republic of Mexico. Office of the chief of the treasury in Sonora. No. 2090.

I have the honor to forward to you the title of the lands called : "Agua Prieta," "Santa Barbara," "Naidenibáachi," "Agua de Beltran," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated in the district of Arizpe, adjudicated to Mr. Jose Camou, Son, that you may, in conformity with the provisions of article 19 of the law of July 22, 1863, be pleased to deliver it to the party in interest, and order possession given him, in virtue of his having paid the value of said overplus (demasias) and that of the stamps affixed to the titles, as I notify that court in another communication of this same date. I request that you be pleased to acknowledge receipt of the present one.

Liberty and constitution. Guaymas, April 4, 1888.

The chief of the treasury :

SUAREZ. [RUBRIC.]

To the district judge, present.

A seal which says: Republic of Mexico. Office of the chief of the treasury in Sonora. No. 2089.

I have the honor to transmit to you the certificate of payment which shows the payment citizen Jose Camou, Son, has made for the overplus (demasias) of his lands called : "Agua Prieta," "Santa Barbara," "Naidenibáachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," situated in the district of Arizpe, adjudicated in his favor, and state to you at the same time that the value of the stamps affixed to the title has also been paid by the party in interest.

Liberty and constitution. Guaymas, April 4, 1888.

The chief of the treasury :

SUAREZ. [RUBRIC.]

To the district judge, present.

A seal which says: Department of public works, colonization, industry and commerce. Mexico. Section 1st. Department of public lands. No. 895.

There remains in this department, with you-communication dated the 6th instant, the certified copy of the receipt for the title issued in favor of citizen Jose Camou, Son.

Liberty and constitution. Mexico, April 14, 1888.

By order of the secretary :

M. FERNANDEZ, [RUBRIC.]
Chief Clerk.

To the district judge in the State of Sonora, Guaymas.

Is a faithful and exact copy of the original proceedings that exist in the archives of this district court. Goes compared and with the corresponding stamps canceled and is issued in compliance with the order in the decree of February 22 of the current year, made in the proceedings instigated in the petition for said copies by the citizen attorney of the United States of America for the land court. To which I certify as secretary *ad interim* of the district court in the State of Sonora, at Guaymas de Zaragoza, March 8, 1899.

GUILLERMO P. COTA. [RUBRIC.]

Seal reading: District court in Sonora, Guaymas.

(Form No. 88.)

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES,
March 11th, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mexico, do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mexico, this day and year next above written, and of the Independence of the United States the 124th.

(Signed)
[SEAL.]

FRANK M. CROCKER,
U. S. Consular Agent.

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JAS. H. REEDER, *Clerk*,
By — — —, *Deputy*.

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DEFENDANTS' EXHIBIT B.

Testimonio del Expediente de denuncia de un terreno adjudicado á favor de las Señoras Josefa Rodríguez, María Bustamente y Salazar, y Refugio Miranda.

380 Al margen las estampillas correspondientes debidamente canceladas.—C. Juez de Distrito.—Josefa Rodríguez, casada y con el permiso de su esposo, José S. Valencia, María Bustamente y Salazar, soltera, y Refugio Miranda, viuda, todas mayores de edad, ciudadanas mexicanas y de esta vecindad, ante Ud. en la vía y forma mas procedente en derecho, exponemos: Que en la frontera del Estado, Distrito de Arispe, se hallan algunos terrenos baldios situados entre los ranchos de la Agua Prieta, Naidenibáachi y la línea de los Estados Unidos por el Norte, y teniendo interes en poblar dichos terrenos para explotar los diferentes ramos de riqueza que contienen, con el derecho que nos concede la ley de 20 de Julio de 1863, los denunciarnos en forma y en el tanto de dos mil quinientas hectaras para cada una de nosotras, suplicando al de su muy digno cargo se sirva decretar la mensura de los referidos terrenos, cuyo valor al precio de Tarifa pagaremos en los terminos que la ley previene, tan luego como se nos expidan los titulos respectivos.—Suplicamos á Ud. se sirva aceptar el presente escrito y siendo justicia que pedimos protestamos lo necesario, etc.—Hermosillo, Mayo cuatro de mil ochocientos ochenta y uno.—María Bustamante Salazar.—Josefa R. de Valencia.—A ruego de Refugio Miranda.—Angela García.—A ruego de Jose S. Valencia.—R. Escobosa.—Presentado en su fecha. Conste.—Guaymas, Mayo veintiuno de mil ochocientos ochenta y uno. Hace por admitido el denuncia á que se contrae el anterior escrito sin perjuicio de tercero que mejor derecho represente. En consecuencia se nombra Agrimensor al Señor Rosalio Banda, para que previa su aceptación y protesta que otorgará ante el C. Juez de 1.^a Ynstancia del Distrito de Arispe á quien se dirigirá requisitoria al efecto con los insertos necesarios proceda con citación de colindantes y presencia de sus titulos á la mensura y levantamiento de planos del terreno que se denuncia hasta la extensión de siete mil quinientas hectaras que se solicitan, ó sean dos mil quinientas para cada uno, marcando con la debida separación tanto en el acta de mensura como en el plano que levante la porción de terreno que á cada uno corresponde, sujetando sus procedimientos á las leyes generales de 22 de Julio y 2 de Agosto de 1863, y devolviendo original á este Juzgado lo practicado para la secuela del expediente, se advierte al apoderado de las interesadas que si dentro de noventa dias contados desde esta fecha no presenta las diligencias que se mandan hacer, se dará por desierto este denuncia, lo mandó y firmó el C. Juez de Distrito de Sonora con los de asistencia ordinaria.—Aguilar.—A.—Leonardo G. Escobar.—A.—Enrique Fontes En la misma fecha se notificó el auto anterior al C. J. P. M. Camou y enterado dijo: que lo oye y firma. J. P. M. Camou.—Aguilar.—A.—Leonardo G. Escobar.—A.—Jose Rodriguez.—Al margen una estampilla

pilla de cincuenta centavos debidamente cancelada.—Hermosillo, Mayo cuatro de mil ochocientos ochenta y uno.—Señor Don Juan P. M. Camou? Guaymas.—Muy Señor Nuestro.—Por la presente damos á Ud. poder mas amplio y cumplido, bastante cuanto en derecho sea necesario, para que representando nuestras personas, derechos y acciones, prosiga por todos sus trámites de la ley el denuncia que con fecha de hoy hicimos ante ese Juzgado de Distrito de unos terrenos baldios situados en la frontera norte del Estado, Distrito de Arizpe, entre los ranchos de la Agua Prieta, Naidenibacachi y la línea de los Estados Unidos por el Norte. Así mismo damos á Ud. facultad para que pueda interponer los recursos de recusacion y demas procedentes en derecho iniciando los juicios de posesion caso que procedan ó contestando los que en contrario se promuevan, protestando como formalmente protestamos á estar y pasar por cuanto Ud. hiciere en el desempeño de esta carta poder; á cuyo efecto ofrecemos expensarle para que haga los pagos de los mencionados terrenos en los terminos prevenidos por la ley de la materia. Somos de Ud. at. y S. S.—Maria Bustamante S.—Josefa r. de Valencia.—á ruego de Refugio Miranda, Angela Garcia.—á ruego de Jose S. Valencia, R. Escobosa.—T.—Eduardo Duranton.—T.—Eduardo Duron.—El C. Licenciado Jesus M. Gaxiola, Juez de Distrito de Sonora.—A Ud., Ciudadano Juez de 1.ª Ynstancia del Distrito de Arizpe, hago saber: Que en un escrito de denuncia, de un terreno baldio, presentado por el C. Juan P. M. Camou, á nombre y en representacion de las señoras Josefa Rodriguez, Maria Bustamante Salazar y Refugio Miranda, este Juzgado ha proveido el auto siguiente:—Guaymas, Mayo veintiuno de mil ochocientos ochenta y uno. Hace por admitido el denuncia á que se contrae el anterior escrito, sin perjuicio de tercero que mejor derecho represente. En consecuencia se nombra de Agrimensor al C. Rosalio Banda, para que previa aceptacion y protesta que otorgará ante el C. Juez de 1.ª Ynstancia del Distrito de Arizpe, á quien se dirigirá requisitoria al efecto con los insertos necesarios, proceda con citacion de colindantes y presencia de sus titulos á la mensura y levantamiento de plano del terreno que se denuncia, hasta la extension de siete mil quinientas hectaras que se solicitan, ó sean dos mil quinientas para cada una marcando con la debida separacion tanto en el acta de mensura como en el plano que levante la porcion de terreno que á cada una corresponde, sujetando sus procedimientos á las leyes generales de 22 de Julio y 2 de Agosto de 1863, y devolviendo original á este Juzgado lo practicado para la secuela del expediente. Se advierte al apoderado de las interesadas que si dentro de noventa dias contados desde esta fecha no presenta las diligencias de mensura que se mandan practicar, se dará por desierto este denuncia? Lo mandó y firmó el C. Juez de Distrito de Sonora, con los de su asistencia ordinaria.—Aguilar.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.—El escrito á que se refiere el auto que antecede es como sigue.—C. Juez de Distrito.—Josefa Rodriguez, casada, y con el permiso de mi esposo, Jose S. Valencia, Maria Bustamante y Salazar, soltera, y Refugio Miranda, viuda, todas mayores de edad, ciudadanas mexicanas y de esta vecindad ante Ud. en la via y forma mas

procedente en derecho, exponemos: Que en la frontera del Estado, Distrito de Arizpe, se hallan algunos terrenos, baldíos, situados entre los ranchos de la Agua Prieta, Naidenibacachi y la línea de los Estados Unidos por el Norte, y teniendo interés en poblar dichos terrenos para explotar los diferentes ramos de riqueza que contienen, con el derecho que nos concede la ley de 20 de Julio de 1863, los denunciarnos en forma y en el tanto de dos mil quinientas hectaras para cada una de nosotras, suplicando al de su muy digno cargo se sirva decretar la mensura de los referidos terrenos, cuyo valor al precio de Tarifa pagaremos en los terminos que la ley previene, tan luego como se nos expidan los títulos respectivos. Suplicamos á Ud. se sirva aceptar el presente escrito y siendo justicia protestando lo necesario, &c.—Hermosillo, Mayo cuatro de mil ochocientos ochenta y uno.—Maria Bustamante S.—Josefa R. de Valencia.—á ruego de Refugio Miranda.—Angela García.—á ruego de Jose S. Valencia.—R. Escobosa.—Y para que lo por mi mandado en el auto inserto tenga su debido cumplimiento, á nombre de la justicia de la Union, exhorto y requiero á Ud.; recomendándole de mi parte que luego de recibida la presente la mande guardar y cumplir, entregandola al Agrimensor nombrado, C. Rosalio Banda, para el desempeño de su comision—Estado en Guaymas de Zaragoza á veinticinco de Mayo de mil ochocientos ochenta y uno.—Jesus M. Aguilar.—A.—Leonardo G. Escobar.—A.—Jose Rodriguez.—C. Juez de Distrito.—Juan P. M. Camou, casado, mayor de edad y de este comercio en representacion acreditada de las Señoras Josefa Rodriguez, Maria Bustamante y Salazar y Refugio Miranda, ante Ud. como mas haya lugar en derecho, digo: Que con fecha cuatro de Mayo del presente año mis poderdantes denunciaron ante el Juzgado de su muy digno cargo unos terrenos baldios en las porciones legales sitios en la frontera del Estado Distrito de Arizpe, y comprendidos entre los ranchos de la Agua Prieta, Naidenibacachi y la línea de los Estados Unidos por el Norte. El denuncia fué admitido con fecha veintiuno de Mayo del mismo año, nombrandose perito agrimensor al titulado C. Rosalio Banda y expidiendose la respectiva requisitoria. Este Señor ha regresado del interior del Estado, y segun informes, no se presta á practicar la medicion. Como de demorarse por mas tiempo la practica de tal diligencia resultan perjuicios á las personas á quienes represento es por tal consideracion que á Ud. pido se sirva nombrar si en ello no hubiere inconveniente, al perito igualmente titulado, Francisco Dublé, en reemplazo del Señor Banda decretando á la vez que el termino para la presentacion de las diligencias de mensura no corra sino desde el dia que se expida la nueva requisitoria. Protesto proceder de buena fe.—Guaymas, Junio veintiocho de mil ochocientos ochenta y uno.—J. P. M. Camou.—Otro si digo: que devuelvo la requisitoria que fué expedida y en la que se nombraba de Agrimensor al Señor Banda y la que no fué remitido á su destino por haber salido el que suscribe previamente al regreso de dicho Señor á este Puesto.—fecha ut supra.—J. P. M. Camou.—Presentad ocon el documento que acompaña hoy á las doce del dia de su fecha. Conste.—Guaymas, Junio veintinueve de mil ochocientos ochenta y uno. Teni-

endo en consideracion lo expuesto por el apoderado de las denunci-
 tes en el presente escrito, por el que aparece que el C. Rosalio Banda,
 agrimensor nombrado por este Juzgado, en auto fecha veinticinco
 de Mayo del corriente año, no ha podido medir el terreno, el terreno
 de que se trata, con cuya demora se perjudican tanto los intereses de
 los denunciantes como los de la Hacienda publica, se revoca el nom-
 bramiento que por dicho auto se confirió al Señor Banda, nombrando
 en su lugar al Señor Francisco Dublé, quien pre via protesta y
 aceptacion del cargo que se le confiere procederá á efectuar la re-
 ferida medida del terreno á que se refiere el presente expediente, y á
 cuyo efecto dirijase nueva requisitoria al mismo C. Juez de 1.^a Ynstan-
 cia del Distrito de Arizpe, con los insertos conducentes para que
 surta sus efectos lo dispuesto por este Juzgado y ampliase el termino
 por noventa dias, dentro del cual deberá presentar las diligencias de
 medida que al efecto se practiquen, el cual se comenzará á contar
 desde la fecha. Asi lo determinó el C. Juez de Distrito de Sonora
 (por ante) por ante los de su asistencia ordinaria.—Aguilar.—A.—
 Leonardo G. Escobar.—A.—Enrique Fontes.—En la misma fecha
 se notificó el auto anterior al apoderado de los denunciantes
 y enterado dijo: que lo oye y firma.—Aguilar.—J. P. M.
 Camou.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.—En
 la misma fecha se expidio nueva requisitoria como está man-
 dado. Conste.—El Ciudadano Licenciado Jesus M. Aguilar,
 Juez de Distrito del Estado de Sonora. A Ud. el de 1.^a Ynstancia
 del Distrito de Arizpe, hago saber: que en el expedient de denun-

cio de siete mil quinientas hectaras de terreno baldio entre
 383 los ranchos Agua Prieta, Naidenibacachi y linea divisoria de
 los Estados Unidos, hecho por Josefa Rodriguez y otras mas,
 se ha provido un auto que dice: Guaymas, Junio veintinueve de
 mil ochocientos ochenta y uno. Teniendo en consideracion lo ex-
 puesto por el apoderado de los denunciantes en el presente escrito
 por el que aparece que el C. Rosalio Banda, agrimensor nombrado
 por este Juzgado en auto fecha veinticinco de Mayo del corriente
 año, no ha podido medir el terreno de que se trata, con cuya demora
 se perjudican tanto los intereses de las denunciantes como los de la
 Hacienda publica, se revoca el nombramiento que por dicho auto se
 confirió al Señor Banda, nombrando en su lugar al Señor Francisco
 Dublé quien previa protesta y aceptacion del cargo que se le con-
 fiere procederá á efectuar la referida medida del terreno á que se
 refiere el presente expediente y á cuyo efecto dirijase nueva re-
 quisitoria al mismo C. Juez de 1.^a Ynstancia del Distrito de Arizpe,
 con los insertos conducentes para que surta sus efectos lo dispuesto
 por este Juzgado y ampliase el tiempo termino por noventa dias
 dentro del cual deberá presentar las diligencias de medida que al
 efecto se practiquen el que se comenzará á contar desde la fecha.
 Asi lo determinó el C. Juez de Distrito de Sonora por ante los testigos
 de su asistencia ordinaria.—Aguilar.—A.—Leonardo G. Escobar.—
 A.—Enrique Fontes.—El auto á que se hace referencia es como
 sigue:—Guaymas, Mayor veinte de mil ochocientos ochenta y uno.
 Hace por admitido el denuncia á que contrae el anterior escrito sin
 perjuicio de tercero que mejor derecho represente. En consecuencia

se nombra agrimensor al Señor Rosalio Banda, para que previa su aceptacion y protesta, que otorgará ante el C. Juez de 1^a. Ynstancia del Distrito de Arizpe, á quien se dirá jirá requisitoria el efecto con los insertos necesarios, proceda con citacion de colindantes y presencia de sus titulos á la mensura y levantamiento de planos del terreno que se denuncia hasta la extension de siete mil quinientas hectaras que se solicitan, ó sean dos mil quinientas para cada uno, marcando con la debida separacion tanto en la acta de mensura como en el plano que levante, la porcion de terreno que á cada uno corresponde, sujetando sus procedimientos á las leyes generales de 22 de Julio y 2 de Agosto de mil ochocientos sesenta y tres, devolviendo original á este Juzgado lo practicado para la secuela del expediente. Se advierte al apoderado de los interesados, que si dentro de noventa dias contados desde esta fecha no presenta las diligencias que se mandan hacer, se dará por desierto este denuncia. Lo mandó y firmó el C. Juez de Distrito de Sonora, con los de su asistencia ordinaria.—Aguilar.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.—El escrito de denuncia es como sigue: C. Juez de Distrito:—Josefa Rodriguez, casada y con el permiso de su esposo, Jose S. Valencia, Maria Bustamante y Salazar, soltera, y Refugio Miranda, viuda, todas mayores de edad, ciudadanas Mexicanas y de esta vecindad, ante Ud. en la via y forma mas procedente en derecho, exponemos: Que en la frontera del Estado, Distrito de Arizpe, se hallan algunos terrenos baldios situados entre los ranchos de la Agua Prieta, Naidenibacachi y la linea de los Estados Unidos por el Norte, y teniendo interes en poblar dichos terrenos baldios, para explotar los diferentes ramos de riqueza que contienen, con el derecho que nos concede la ley de 20 de Julio de 1863, los denunciarnos en forma y en el tanto de dos mil quinientas hectaras para cada una de nosotras, suplicando al de su muy digno cargo, se sirva decretar la mensura de los referidos terrenos cuyo valor, cuyo valor al precio de Tarifa, pagaremos en los terminos que la ley

384 previene, tan luego como se nos expidan los titulos respectivos. Suplicamos á Ud. se sirva aceptar el presente escrito y siendo justicia que pedimos protestamos lo necesario, &.—Hermosillo, Mayo cuatro de mil ochocientos ochenta y uno.—Maria Bustamante S.—Josefa R. de Valencia.—á ruego de Refugio Miranda.—Angela Garcia.—á ruego de Jose S. Valencia.—R. Escobosa. Y para que lo por mi mandado en el auto inserto tenga su debido cumplimiento, á nombre de los poderes de la Union exhorto y requiero á Ud. recomendandole de mi parte que luego de recibida la presente la mande guardar y cumplir, entregandola al nuevo agrimensor nombrado, previa su correspondiente aceptacion y protesta, para el desempeño de la comision que se le confiere.—Es dado en Guaymas de Saragoza á veintinueve de Junio de mil ochocientos ochenta y uno.—Jesus M. Aguilar.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.—Al margen el sello del Juzgado de 1^a. Ynstancia de Arizpe.—Arizpe, diez y ocho de Julio de mil ochocientos ochenta y uno. Presente en este Juzgado de mi cargo el C. Agrimensor Francisco Dublé se le hizo saber el auto del Señor Juez de Distrito fechado el veintinueve de Junio del presente año por el cual se le nombra perito agrimensor

para que practique la mensura, apeo y deslinde del baldio denunciado por las señoras Josefa Rodriguez, Maria Bustamante y Refugio Miranda, y hecho cargo de su comision, dijo que lo oye y acepta y protesta su fiel cumplimiento firmando conmigo, el presente Juez, y los testigos de asistencia.—Jose M^a. E. Morales.—Francisco Dublé.—A.—Leonardo Gamez. A.—Jacinto Quijada.—Cabullona, veinte de Julio de mil ochocientos ochenta y uno recibido en esta fecha, librense citas á los colindantes Jose Maria Elias, dueño del rancho de San Pedro, al Señor Don Pascual Camou, que accidentalmente se encuentra en Fronteras, dueño de los ranchos del Agua Prieta, Naidenibacachi y al Señor Don Jesus Maria Ainsa, representante de los terrenos medidos al Señor Rochin y socios, para que se presenten el dia veinticuatro del presente en la mohonera Noroeste de los terrenos del Señor Camou á defender sus linderos con sus titulos.—Francisco Dublé.—A.—Filomeno Escalante.—A.—Angel Luna.—Hermosillo, Julio once de mil ochocientos ochenta y uno.—Señor Don Pascual Camou.—Presente.—Estimado Señor: Por la presente facultamos á Ud. cuanto en derecho sea necesario para que á nuestro nombre y en nuestra propia representacion presencie las medidas que deben ser practicadas por el perito agrimensor, Don Francisco Dublé, de siete mil quinientas hectaras de terreno baldio que tenemos denunciado en la frontera del Estado, Distrito de Arizpe, entre los ranchos de la Agua Prieta, Naidenibacachi y la linea de los Estados Unidos por el Norte, segun requisitoria del C. Juez de Distrito comprometiendonos á estar y pasar por cuanto Ud. hiciere en el desempeño de esta carta-poder.—Somos de Ud. afmas y S. S.—á ruego de Refugio Miranda.—Angela Garcia. Maria Bustamante.—Josefa R. de Valencia.—Con mi permiso.—á ruego de Jose S. Valencia.—Jose Camou, h.—T.—Lorenzo Pompa.—T.—Fdo. Gandara.—En contestacion al oficio de Ud. de fecha veinte del presente mes, que ayer á las cinco de la tarde recibí, en que me cita Ud. para hoy á las ocho y cuarto de la mañana en la mohonera N. O. de los terrenos del Señor Camou frente á las Mulas: Diré á Ud. que los titulos de este Rancho estan en Magdalena, pues con motivo de tener nosotros denunciadas con anterioridad las demasias de nuestro Rancho ya dicho me fué preciso mandarlos el mes proximo pasado hasta Guaymas, á fin de hacer valer nuestros derechos ante el Juzgado de Distrito, por denuncia que nos hizo el Señor Lacey y Socios de las demasias de nuestro ya repetido Rancho.—Con el tiempo tan perentorio que Ud. me cita, me es de todo punto imposible el poder estar para la hora
385 citada, tambien diré á Ud. que los terrenos de este rancho colindan con los del Señor Camou, como lo habrá visto por los titulos de dicho Señor, pues no oreo que haya baldios entre este rancho y aquellos, lo que digo á Ud. para su conocimiento.—San Pedro, Julio veinticuatro de mil ochocientos ochenta y uno.—Jose M^a. Elias.—Al Yngeniero en comision donde se halle.—El dia veinticuatro de Julio de mil ochocientos ochenta y uno, en debido cumplimiento al auto del Señor Juez de distrito de veintinueve de Junio del presente año; me trasladé con los testigos de asistencia á la mohonera Noroeste de los terrenos de los Señores Camou en la linea

divisoria de los terrenos de San Pedro, donde habiendo sido citados los colindantes é interesados, para dar principio á la mensura del baldio denunciado por las señoras Josefa R. de Valencia, Maria Bustamante y Refugio Miranda, en dicho punto se nos reunieron el Señor D. Jesus M^a. Ainsa y el Señor D. Pascual Camou, quien presentó una carta-poder de las Señoras denunciantes del baldio para que las representara en todos los actos de la mensura, la que se agrega á este expediente; en el mismo momento se recibió la contestacion del Señor Don Jose M^a. Elias, á la cita que se le habia hecho para que se presentara á defender sus lineas, la que tambien se agregó al expediente. En seguida se dió principio á la mensura, colocando el Teodolito bien nivelado en la mohonera conocida con el nombre del Monton de Piedras, se trazó una linea que corre al Norte veintinueve grados treinta minutos Oeste y se midieron con el doble decametro cuatro mil metros, llegando á la linea americana que divide este Estado del Territorio de Arizona de los Estados Unidos del Norte America, en dicho punto se ordenó poner una mohonera. En seguida se trazó otra linea al Norte 77° al Este magnetico que corresponde á Este verdadero del mundo y determina el paralelo de latitud $31^{\circ} 20'$ Norte; dicha linea midió cuarenta y tres mil setecientos metros, terminandose en un monumento de la linea americana que se tomó por limite del baldio que se mide, y siendo ya muy tarde se suspendieron las operaciones de mensura para el dia siguiente; lo que se hace sentar por diligencia y firme con los testigos de asistencia, interesados representados por el Señor Camou y colindantes.—Francisco Dublé.—A.—Filomeno Escudate.—A.—Ángel Luna.—Pascual Camou.—J. M. Ainsa.—Diego y Juan de Julio del mismo año, acompañado de las mismas personas del dia anterior se continuaron las operaciones de mensura, pudiendo usar las medidas materiales, por lo accidentado de la tierra se empleó la triangulacion, midiendo la distancia que hay entre el referido monumento á la mohonera Noreste de los terrenos de Camou en la falda del Cerro Gallardo, la que resultó en ochocientos veinte metros del monumento americano al Norte cinco grados al Este. De este punto se trazó otra linea al Sur y nueve grados Oeste que midió trece mil ciento cuarenta metros terminandose en una mohonera llamada de la Lomita. De este punto se trazó otra linea al Sur sesenta y nueve grados treinta minutos al Oeste, que midió veintinueve mil seiscientos ochenta metros terminandose en la mohonera llamada Monton de Piedras, donde se dió principio á la mensura, cerrando el perimetro de la figura. Estas dos ultimas lineas fueron trazadas, segun el plano y título que exhibió el Señor Camou de sus terrenos.—La area comprendida por las mencionadas lineas es de siete mil cuatrocientas, sesenta y cinco aras, cuarenta y una centiaras, unidades antiguas corresponden á tres sitios de ganado mayor y nueve mil ochocientos noventa y ocho diez mil sesenta y cinco de este Estado, su valor es ochocientos cuarenta pesos y seis centavos. La direccion de las lineas es magnetica y la declinacion de la aguja determinada por la am-

litud del sol es de tres grados seis minutos treinta segundos Nordeste. La superficie del terreno en su mayor parte es plana, tiene excelente pastura, es accidentada en la parte oriental y occidental, es muy escasa de madera y muy adecuada á crianza de ganado mayor. Con lo que se concluyeron las operaciones de este dia que hice sentar por diligencia que firmó con los testigos de asistencia, el Señor Camou como colindante y representando á los interesados, y el Señor Jesus Ainsa en representación del baldio medido al Señor Don Cirilo Rochin.—Francisco Dublé.—A.—Filomeno Escalante.—A.—Angel Luna.—Pascual Camou.—J. M. Ainsa.—El dia veintiseis del mismo mes y año se prosiguió al fraccionamiento del baldio denunciado asignado á la Señora Josefa R. de Valencia su lote en la parte occidental del terreno el cual colinda con los terrenos de San Pedro al poniente en una extension de cuatro mil metros; al Norte con el Territorio de Arizona de los Estados Unidos en una extension de siete mil seiscientos cuarenta metros; al oriente con el lote de Doña Maria Bustamante en una extension de tres mil trescientos metros y al Sur con los terrenos de los Señores Camou, en una extension de cinco mil ochocientos setenta y cinco metros. La area de este lote es de dos mil trescientos treinta y cuatro hectaras, ochenta y ocho aras y cuarenta y siete centiaras. El lote correspondiente á la Señora Doña Maria Bustamante colinda al poniente con el lote de la Señora Valencia en una extension de tres mil trescientos metros; al Norte con la linea americana en extension de nueve mil doscientos metros; al oriente con el lote de la Señora Miranda en una extension de dos mil cien metros y al Sur con los terrenos de los Señores Camou, en una extension de nueve mil quinientos cincuenta metros. Su area es de dos mil trescientos treinta y cuatro hectaras, ochenta y ocho aras y cuarenta y siete centiaras. El lote perteneciente á la Señora de la Señora Doña Josefa R. de Valencia, tiene por colindantes al poniente el lote de la Señora Bustamante en una extension de tres mil cien metros; al Norte la linea americana en una extension de novecientos mil ochocientos diez metros; al oriente colinda con el baldio medido al Señor Rochin y sacos y está separado por una linea de novecientos veinte metros, y al Sur colinda con los terrenos del Señor Camou terminado por dos lineas, la una que sale del cerro Gallardo y se termina en la molinera de la "Lomita" de tres mil ciento cuarenta metros á la otra que sale de la "Lomita" y se termina en el angulo Sudeste de la Señora Bustamante de catorce mil doscientos cincuenta y cinco metros de longitud. La area de este lote es como los anteriores de dos mil trescientos treinta y cuatro hectaras ochenta y ocho aras y cuarenta y siete centiaras, con lo que se concluyó esta acta de mensura que firmó con los testigos de asistencia, interesados y colindantes, haciendo constar haberme sujetado estrictamente á las leyes de la materia y autos del Señor Juez de Distrito.—Francisco Dublé.—Filomeno Escalante.—A.—Angel Luna.—Pascual Camou.—J. M. Ainsa.—Fronteras, diez y ocho de Agosto de mil ochocientos ochenta y uno.—Estando concluidas estas diligencias de mensura se remiten al Señor Juez de Distrito conforme á lo mandado.—Francisco Dublé.—A.—Filomeno Escalante.—A.—Angel Luna.—Guaymas, Septiembre doce de mil

ochocientos ochenta y uno.—Por recibidas las diligencias de mensura que en seguida se agregan. Como lo previene el Art. 16 de la ley de 22 de Julio de 1863, inquierase de la Jefatura de Hacienda del Estado si la Hacienda publica está en posesion del terreno denunciado. Lo mandó y firmó el C. Juez de Distrito de Sonora, con los de asistencia.—Aguilar.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.

387 En la misma fecha se notificó el auto anterior al C. Juan P. M. Camou, apoderado de los denunciantes y enterado dijo que lo oye y firma.—Aguilar.—J. P. M. Camou.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.—Al margen el sello de la Jefatura de Hacienda. C. Juez de Distrito. Examinado el presente expediente de denuncia de un terreno baldío situado entre los ranchos La Agua Prieta y Naidemibacachi del Distrito de Arizpe por las Señoras Josefa R. de Valencia, Maria Bustamante y Refugio Miranda, se han registrado los antecedentes de esta Jefatura para averiguar si está enagenado á persona alguna y siendo el archivo relativo al ramo de Fomento tan incompleto se ignora si la Hacienda Publica está ó no en posesion del terreno. Guaymas, Octubre catorce de mil ochocientos ochenta y uno.—Agapito Silva.—Guaymas, Noviembre diez y siete de mil ochocientos ochenta y uno. Por ignorar la Jefatura de Hacienda del Estado, segun el antecedente informe, que la Hacienda Publica está en posesion del terreno que se denuncia, como lo previene el Art. 17 de la ley de 22 de Julio de 1863 publíquese dicho denuncia por tres veces consecutivas en el periodico oficial del Estado, para que los que se consideren con mejor derecho ocurran á este Juzgado de Distrito, por sí ó por apoderado instruido y expensado, á deducir dentro del termino de treinta dias, contados de la primera publicacion X de no hacerlo en el termino señalado, se adjudicará el terreno, terreno á los denunciantes. En Guaymas y Arizpe el C. Juez de Distrito de Sonora, con los de asistencia.—Aguilar.—A.—Leonardo G. Escobar.—A.—Enrique Fontes.—En seguida se notificó el auto anterior al C. Juan P. M. Camou y enterado dijo: que lo oye y firma.—Aguilar.—J. P. M. Camou.—A.—Enrique Fontes.—A.—G. Rodriguez.—En la misma fecha y en cumplimiento del auto anterior se mando publicar en el Periodico Oficial del Estado el siguiente Edicto.—Por el presente se cita y emplaza á los que se consideren con mejor derecho á unos terrenos baldios situados en el Distrito de Arizpe, entre los ranchos Agua Prieta, Naidemibacachi y la linea de los Estados Unidos por el Norte, denunciados por las Señoras Josefa Rodriguez, Maria Bustamante de Salazar y Refugio Miranda, deberan de presentarse á este Juzgado de Distrito, por sí ó por apoderado instruido y expensado á deducir el mejor derecho que crean tener, lo que verificaran en el termino de treinta dias, contados de la primera publicacion del presente Edicto que por tres veces consecutivas se insertará en el Periodico Oficial del Estado y de no hacerlo en el plazo señalado se adjudicará á los denunciantes los expresados terrenos. Lo que asiento por diligencia.—Aguilar.—En seguida se cumplió con lo mandado. Conste.—Diciembre treinta y uno de mil ochocientos ochenta y uno.—El Juez que suscribe da fe haber visto publicado por primera vez en el Periodico Oficial del Estado, La Con-

stitucion, N. 63, correspondiente al veintiseis de Noviembre ultimo el antecedente Edicto y que no se agrega un ejemplar de dicho periodico al presente expediente por no venir mas que uno para la coleccion del Juzgado. Lo que se anota por diligencia.—Aguilar.—Guaymas, Enero cinco de mil ochocientos ochenta y dos. Pase este expediente á la Jefatura de Hacienda del Estado para que forme la liquidacion del terreno conforme á la tarifa vigente y hecho que sea procedase á la adjudicacion del terreno á favor de los denunciante. Lo mandó y firmó el C. Juez de Distrito de Sonora con los de asistencia.—Aguilar.—A.—Leonardo G. Escobar.—A.—G. Rodriguez.—En la misma fecha se notificó el auto anterior al C. Juan P. M. Camou, apoderado de los interesados, y enterado dijo: que lo oye y firma.—Aguilar.—J. P. M. Camou.—A.—Leonardo G. Escobar.—A.—G. Rodriguez.—En la misma fecha se cumple con lo mandado.—

388 Liquidacion que forma la Jefatura de Hacienda para el pago del terreno adjudicado á las Señoras Josefa R. de Valencia, Maria Bustamante y Refugio Miranda.—Valor de 7,004 hectaras sesenta y cinco aras, 41 centiaras á razon de doce centavos segun tarifa de 1881, en que se hizo el denuncia..... \$840.56

En efectivo al erario federal.....	280.18	
En bonos de la deuda.....	140.10	
En efectivo al erario del Estado.....	280.18	
En creditos.....	140.10	
Ygual.....	840.56	840.56

Guaymas, Enero veintiano de mil ochocientos ochenta y dos.—J. Suarez M.—de Guaymas, Marzo dos de mil ochocientos ochenta y dos. Visto el presente expediente de denuncia formallo con total arreglo á las leyes generales de veintidos de Julio y dos de Agosto de mil ochocientos sesenta y tres sobre ocupacion y posesion de terrenos baldios. Visto el auto que concede la Jefatura de Hacienda del Estado del que aparece que dicha denuncia de denuncia publica está en posesion del terreno, en consecuencia mando publicar el denuncia para que llegase á conocimiento de todos y considerando que hecha tal publicacion, no ha habido alguno que se presente alegando mejor derecho, habiendo transcurrido el termino bastante, para que caso de haber lo se presentase al Juzgado: El Juez que suscribe en cumplimiento de los artículos 17, 18 y 19 de la ley de 22 de Julio ya referida decreta: 1º se adjudica en posesion, y sin perjuicio de tercero, á las Señoras Josefa R. de Valencia, Maria Bustamante y Refugio Miranda, siete mil cuatro hectaras sesenta y cinco aras y cuarenta y una centiaras, (7004 Hrs. 65 As. 41 Cs.), de terreno baldio, situado en el Distrito de Arizpe, colindando al Norte con los Estados Unidos de America, al Oriente con los Señores Camou, cuyo baldio dividido en tres lotes de dos mil trescientas treinta y cuatro hectaras, ochenta y ocho aras y siete centiaras para cada una de las denunciante, consta en el plano levantado y expediente de mensura respectivo.—La presente adjudicacion no surtirá efecto alguno si no es que se

por la Secretaria de Fomento, á quien por conducto del Ejecutivo del Estado se remitirá testimonio de este expediente y copia del plano respectivo.—3°.—No se hará entrega á los interesados del terreno y correspondiente titulo, si no es previa dicha aprobacion y mediante la constancia de haber satisfecho legalmente el precio total del terreno en la oficina respectiva, con arreglo á la tarifa vigente al tiempo del denuncia. El C. Juez de Distrito de Sonora lo decretó y firmó con los testigos de mi asistencia ordinaria.—Jesus M. Aguilar.—A.—Enrique Fontes.—A.—G. Rodriguez.—En la misma fecha se notificó el auto que antecede al C. Juan P. M. Camou, apoderado de las interesadas, y enterado dijo: que lo oye, es conforme y firmó.—Aguilar.—J. P. M. Camou.—A.—Enrique Fontes.—A. G. Rodriguez.—En siete del mismo y en quince fojas utiles se remite testimonio de este expediente y copia del plano respectivo á la Secretaria de Fomento para su aprobacion. Conste.—Al margen un sello que dice: Republica Mexicana. Estado Libre y Soberano de Sonora. Seccion 5. Adjunta á la comunicacion de Ud. de siete del actual, se recibió en este Gobierno copia autorizada del expediente de denuncia de un terreno baldio situado en el Distrito de Arizpe hecho por las Señoras Josefa Rodriguez, Maria Bustamante y Salazar y Refugio Miranda, cuyo denuncia se remite informado con esta fecha á la Secretaria de Fomento en cumplimiento del articulo 18 de la ley general de 20 de Julio de 1863.—Lo que en contestacion tengo el honor de decir á Ud.—Libertad

389 en la Constitucion.—Hermosillo, Marzo ocho de mil ochocientos ochenta y dos.—Carlos R. Ortiz.—Pedro Ochoa, Srio. Al Juez de Distrito del Estado.—Guaymas.—Al margen un sello que dice: Ministerio de Fomento, Colonizacion, Industria y Comercio.—Seccion 1ª. N. 4584.—El Presidente de la Republica se ha servido aprobar la adjudicacion decretada por ese Juzgado de Distrito á favor de las Señoras Josefa Rodriguez, Maria Bustamante y Salazar y Refugio Miranda, de un terreno baldio sito en el Distrito de Arizpe de ese Estado.—En consecuencia se les han expedido los titulos respectivos de propiedad, cuyos documentos se remiten á Ud. á fin de que conforme al articulo 19 de la ley vigente les entre que á las interesadas y mande darles posesion del terreno luego que justifiquen que han pagado el valor de este y el de las estampillas del papel en que se les extendieron los titulos.—Libertad y Constitucion. Mexico, Septiembre diez y nueve de mil ochocientos ochenta y dos.—P. o. d. S.—M. Fernandez.—O. M.—El Juez de Distrito del Estado de Sonora, Guaymas.—Al margen el sello de la Jefatura de Hacienda.—Nº. 1253.—Tengo el honor de remitir á Ud. dos certificados de entero, uno por valor de \$840.54 c que justifica el pago de un terreno baldio adjudicado en favor de las Señoras Josefa Rodriguez y Socias, y otro de \$3.90 c, el pago de estampillas fijadas en el titulo.—Libertud y Constitucion.—Guaymas, Didiembre veintitres de mil ochocientos ochenta y dos.—Agapito Silva. Al Juez de Distrito. Presente.—Al margen el sello de la Jefatura de Hacienda.—Certificado Nº. 108.—El Jefe de Hacienda en Sonora certifica: Que á fojas sesenta y ocho del libro general de caudales de la Jefatura correspondiente al año fiscal actual obra una partida del tenor sigui-

ente.—1882.—Diciembre veintitres.—á fraccion XIX, Artículo 1º. Producto de terrenos baldios, ochocientos-cuarenta pesos, cincuenta y cuatro centavos que entera en esta Jefatura el apoderado de las Señoras Josefa Rodriguez, Maria Bustamante y Salazar y Refugio Miranda, de un terreno baldio, sito en el Distrito de Arizpe, que se les ha adjudicado y cuyo pago se hizo en la forma siguiente:

Al erario federal en efectivo.....	\$280.18
Al erario federal en bonos.....	\$140.09
Al erario del Estado en efectivo y bonos.....	\$420.27
	<hr/>
Billete N°. 115.....	\$840.54

Y para constancia se expide el presente en Guaymas á veintitres de Diciembre de mil ochocientos ochenta y dos.—Agapito Silva.—Al margen el sello de la Jefatura de Hacienda.—Certificado N°. 109.—El Jefe de Hacienda en el Estado de Sonora certifica: Que á fojas sesenta y ocho del libro general de caudales de esta Jefatura, correspondiente al año fiscal actual, obra una partida del tenor siguiente.—1882.—Diciembre veintitres.—á remisiones de la Tesoreria General le la Federacion: Tres pesos noventa centavos que entera en esta Jefatura el apoderado de las Señoras Josefa Rodriguez y Socias por importe de las estampillas fijadas en los titulos que se les ha expedido por adjudicacion de un terreno baldio sito en el Distrito de Arizpe.—Billete N°. 116.—\$3.90.—Y para constancia se expide el presente en Guaymas á veintitres de Diciembre de mil ochocientos ochenta y dos. Agapito Silva.—Al margen un timbre de cincuenta centavos debidamente cancelado.—Recibi del Juzgado de Distrito del Estado, como apoderado de las Señoras Josefa Rodriguez, Maria Bustamante Salazar y Refugio Miranda, tres titulos de propiedad de un terreno baldio sito en el Distrito de Arizpe, expedidos por el C. Presidente de la Republica el diez y nueve de Septiembre proximo pasado á favor de las expresadas Señoras.—390 Guaymas, Diciembre veintitres de mil ochocientos ochenta y dos.—J. P. M. Camou.

Es copia fiel y exacta del expediente original que obra en el archivo de este Juzgado de Distrito. Va confrontada y cancelados los timbres respectivos y que se expide en cumplimiento de lo mandado por auto de veintidos de Febrero del corriente año dictado en el expediente promovido en solicitud de dichas copias por el Procurador de los Estados Unidos de America para la Corte de Terrenos. Lo que certifico como Secretario del Juzgado de Distrito en Sonora á ocho de Marzo de mil ochocientos noventa y nueve.

GUILLERMO P. COTA. [RUBRICA.]

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILM

(Form No. 88.)

*Form for Authentication of Signature.*CONSULAR AGENCY OF THE UNITED STATES,
March 11th, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mexico, do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mexico, this day and year next above written, and of the Independence of the United States the 12th.

FRANK M. CROCKER,
U. S. Consular Agent.

[SEAL.]

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk,*
By ———, *Deputy.*

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MAP—A PART OF PL'TF'S EXH. B.

(Here follows map marked page 391.)

392 Denouncements between Agua Prieta and Arizona in case No. 5.

Translation of Defendants' Exhibit B.

Testimonio of the expediente of denouncement of a tract of land adjudicated to Josefa Rodriguez, Maria Bustamante y Salazar, and Refugio Miranda.

Total area : 3.9 sitios=16,920 acres.

393 On the margin the corresponding stamps duly canceled.
Citizen district judge :

We, Josefa Rodriguez, married, and with the consent of my husband, Jose S. Valencia, Maria Bustamante y Salazar and Refugio Miranda, widow, all of lawful age, citizens of Mexico and residents of this place, before you, in the best and most formal manner of law, state : That on the frontier of the State, district of Arizpe, there are some vacant, public lands, situated between the ranches of Agua Prieta, Naidenibáachi and the line of the United States on the north, and being interested in settling said lands for the purpose of exploiting the different branches of wealth they contain, with the right which the law of July 20, 1863, concedes to us, we formally denounce them and to the extent of two thousand five hundred hectares for each one of us, praying the court under your very worthy charge to be pleased to decree the survey of said lands, the value of which, at the tariff price, we will pay in the terms the law prescribes as soon as the proper titles are issued to us. We pray you to be pleased to admit the present petition, and, what we ask being just, we protest whatever is necessary, etc.

Hermosillo, May 4, 1881.

MARIA BUSTAMANTE SALAZAR.
JOSEFA R. DE VALENCIA.

At the request of Refugio Miranda :
ANGELA GARCIA.

At the request of Jose S. Valencia :
R. ESCOBOSA.

Presented on its date. Attest.

394 Guaymas, May 21, 1881.—The denouncement to which the foregoing petition refers is admitted without prejudice to a third person who represents a better right. Consequently the surveyor, Mr. Rosalio Banda, is appointed to proceed, after his acceptance and oath, which he will take before the citizen judge of first instance of the district of Arizpe, to whom an order will be sent for the purpose with the necessary clauses, after citation of the adjoining owners and presence of their titles, to the survey and making of the maps of the land denounced, to the extent of seven thousand five hundred hectares which they solicit, or be it two thousand five hundred for each one, marking with due separation both in the survey and on the map he may make the portion of land corresponding

to each one, subjecting his operations to the general laws of July 22 and August 2, 1863, and returning the original proceedings to this court for further action thereon. The attorney of the parties in interest is cautioned that if, within ninety days counted from this date, he does not present the proceedings ordered executed, this denouncement shall be declared abandoned. The district judge in Sonora ordered and signed it with ordinary attending witnesses.

AGUILAR.

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES.

On the same date notice of the foregoing order was given to citizen J. P. M. Camou, and when acquainted with it he said: That he hears it and signs it.

J. P. M. CAMOU.
AGUILAR.

Witness:

LEONARDO G. ESCOBAR.

Witness:

JOSE RODRIGUEZ.

395 On the margin a fifty-cent stamp duly canceled.

MAY 4, 1881.

Mr. Juan P. M. Camou, Guaymas.

OUR DEAR SIR: By these presents we give you the most ample, complete, and sufficient power that may be necessary in law to represent our persons, rights, and interests, to prosecute through all the stages of the law the denouncement we make today before the district court of some vacant, public lands situated on the northern frontier of the State, district of Arizpe, between the ranches of Agua Prieta, Naidenibáachi and the line of the United States on the north. We likewise give you power to interpose the recourse of challenge and others permitted by the law, to initiate suits for possession in case they are necessary or to answer those brought by adverse parties, protesting as we formally protest to be and abide by whatever you shall do in the execution of this letter of attorney, to which end we offer to provide you with funds to make the payments for said lands in the terms prescribed by the law on the matter.

We are your attentive and obedient servants,

MARIA BUSTAMANTE, S.
JOSEFA R. DE VALENCIA.

At the request of Refugio Miranda:

ANGELA GARCIA.

At the request of Jose S. Valencia:

R. ESCOBOSA.

Witness:

EDUARDO DURANTON.

Witness:

EDUARDO DURAN.

Citizen Licentiate Jesus M. Gaxiola, district judge in Sonora :

396 To you, citizen judge of first instance of the district of Arizpe, I make known : That in a petition of denouncement of a tract of vacant, public land presented by citizen Juan P. M. Camou, in the name and representation of Josefa Rodriguez, Maria Bustamante Salazar and Refugio Miranda, this court has made the following order :

Guaymas, May 21, 1881.—The denouncement to which the foregoing petition refers is admitted without prejudice to a third person who represents a better right. Consequently the surveyor, Mr. Rosalio Banda, is appointed to proceed, after his acceptance and oath, which he will take before the citizen judge of first instance of the district of Arizpe, to whom an order will be sent for the purpose with the necessary clauses, after citation of the adjoining owners and presence of their titles, to the survey and making of the maps of the land denounced, to the extent of seven thousand five hundred hectares which they solicit, or be it two thousand five hundred for each one, marking with due separation both in the survey and on the map he may make the portion of land corresponding to each one, subjecting his operations to the general laws of July 22 and August 2, 1863, and returning the original proceedings to this court for further action thereon. The attorney of the parties in interest is cautioned that if, within ninety days counted from this date, he does not present the proceedings ordered executed, this denouncement shall be declared abandoned. The district judge in Sonora ordered and signed it with his ordinary attending witnesses.

AGUILAR.

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES.

The petition to which the foregoing order refers is the following :

Citizen district judge :

397 We, Josefa Rodriguez, married, and with the consent of my husband, Jose S. Valencia, Maria Bustamante y Salazar and Refugio Miranda, widow, all of lawful age, citizens of Mexico and residents of this place, before you, in the best and most formal manner of law, state : That on the frontier of the State, district of Arizpe, there are some vacant, public lands, situated between the ranches of Agua Prieta, Naidenibáachi, and the line of the United States on the north, and being interested in settling said lands for the purpose of exploiting the different branches of wealth they contain, with the right which the law of July 20, 1863, concedes to us, we formally denounce them and to the extent of two thousand five hundred hectares for each one of us, praying the court under your very worthy charge to be pleased to decree the survey of said lands, the value of which, at the tariff price, we will pay in the terms the law prescribes as soon as the proper titles are issued to us. We pray

you to be pleased to admit the present petition, and, what we ask being just, we protest whatever is necessary, etc.

Hermosillo, May 4, 1881.

MARIA BUSTAMANTE, S.
JOSEFA R. DE VALENCIA.

At the request of Refugio Miranda :
ANGELA GARCIA.

At the request of Jose S. Valencia :
R. ESCOBOSA.

And that what is ordered by me in the herein-inserted decree may have its due observance, in the name of the justice of the union, I
398 exhort and require you, recommending to you on my part
that as soon as you receive these presents you order them observed and complied with, delivering them to the surveyor appointed, citizen Rosalio Banda, for the discharge of his commission.

It is given in Guaymas de Zaragoza, May 25, 1881.

JESUS M. AGUILAR.

Witness :
LEONARDO G. ESCOBAR.

Witness :
JOSE RODRIGUEZ.

Citizen district judge :

I, Juan P. M. Camou, married, of lawful age, and a merchant of this place, in proper representation of Josefa Rodriguez, Maria Bustamante y Salazar, and Refugio Miranda, before you, in due form of law, state: That under date of May 4th of the present year, my principals denounced before the court under your very worthy charge a tract of vacant, public land, in legal portions, situated on the frontier of the State, district of Arizpe, and comprised between the ranches of Agua Prieta, Naidenibáachi and the line of the United States on the north. The denouncement was admitted under date of May 21st of the same year, the surveyor, who has a diploma, citizen Rosalio Banda, being appointed and the corresponding order made. This gentleman has returned from the interior of the State and from information is not willing to make the survey. As delay for a longer time in making the proceedings will result in prejudice to the persons I represent, it is for that consideration that I ask you to be pleased to appoint, if there is no objection thereto, the surveyor, who likewise has a diploma, Francisco Dublé, in place of Mr. Banda, decreeing at the same time the term for the presentation of the proceedings of survey shall not run except from the day the new order is issued. I protest that I act in good faith.

Guaymas, June 28, 1881.

J. P. M. CAMOU.

399 I state further that I return the order that was issued and in which the surveyor, Mr. Banda, was appointed and which

was not sent to its destination because the undersigned had left prior to the return of said gentleman to this port.

Date *ut supra*.

J. P. M. CAMOU.

Presented with the document accompanying it today at 12 of its date. Attest.

Guaymas, June 29, 1881.—Taking into consideration the statement of the attorney of the denouncers in the present petition, from which it appears that citizen Rosalio Banda, who was appointed surveyor by this court, in an order dated May 26, 1881, has not been able to survey the land in question, by which delay both the interests of the denouncers and those of the public treasury are prejudiced, the appointment conferred by said order upon Mr. Banda is revoked, appointing in his place Mr. Francisco Dublé who, after his oath and acceptance of the commission that is conferred upon him, will proceed to make said survey of the lands to which the present proceedings refer and for which purpose a new order will be addressed to said citizen judge of first instance of the district of Arizpe, with the necessary clauses, that the order made by this court may have effect, and extend the term for ninety days within which he must present the proceedings of survey, that may be made for the purpose, which will begin to be counted from this date. The citizen district judge in Sonora thus determined before his ordinary attending witnesses.

AGUILAR.

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES.

400 On the same date notice of the foregoing order was given to the attorney of the denouncers and when acquainted with it he said: That he hears it and signs it.

AGUILAR.

J. M. P. CAMOU.

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES.

On the same date a new order was issued. Attest.

I, citizen Licentiate Jesus M. Aguilar, district judge in the State of Sonora, to you, judge of first instance of the district of Arizpe, make known: That in the proceedings of denouncement of seven thousand five hundred hectares of vacant, public land between the ranches of Agua Prieta, Naidenibácachi and the boundary line of the United States, made by Josefa Rodriguez and others a decree has been made which says:

Guaymas, June 29, 1881.—Taking into consideration the statement of the attorney of the denouncers in the present petition, from which it appears that citizen Rosalio Banda, who was appointed surveyor by this court, in an order dated May 25, 1881, has not been able to survey the land in question, by which delay both the interests of the denouncers and those of the public treasury are prejudiced, the appointment conferred by said order upon Mr. Banda is revoked, and appointing in his place Mr. Francisco Duble who, after his acceptance of the commission that is conferred upon him, will proceed to make said survey of the lands to which the present proceedings refer and for which purpose a new order will be addressed to said citizen judge of first instance of the district of Arizpe with the necessary clauses, that the order made by this court may have effect, and extend the term for ninety days within which he must be for the ordinary

401 present the proceedings of survey, that may be made for the purpose, which will begin to be counted from this date. The citizen district judge in Sonora thus determined before his attending witnesses.

AGUILAR.

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES.

The order to which reference is made is as follows :

21

Guaymas, May 20, 1881.—The denouncement to which the foregoing petition refers is admitted without prejudice to a third person who represents a better right. Consequently the surveyor Mr. Rosalio Banda is appointed to proceed, after his acceptance and oath, as judge of first instance of the district of Arizpe, to whom an order will be sent for the purpose of the necessary clauses, after citation of the adjoining owners and making of the map of the land denounced, to the extent of seven thousand five hundred and one, marking with due separation both in the survey and on the map he may make the portion of land corresponding to each one, subjecting his operations to the general laws of July 22 and 2, 1863, and returning the original proceedings to this court for further action thereon. The attorney of the parties is cautioned that if, within ninety days counted from this date, he does not present the proceedings ordered executed, this denouncement shall be declared abandoned. The district judge in Sonora signed it with ordinary attending witnesses.

AGUILAR.

Witness :

LEONARDO G. ESCOBAR.

Witness :

ENRIQUE FONTES.

402 The petition of denouncement is as follows :

Citizen district judge :

We, Josefa Rodriguez, married, and with the consent of my husband, Jose S. Valencia, Maria Bustamante y Salazar and Refugio Miranda, widow, all of lawful age, citizens of Mexico and residents of this place, before you, in the best and most formal manner of law, state: That on the frontier of the State, district of Arizpa, there are some vacant public lands, situated between the ranches of Agua Prieta, Nacolinchic and the line of the United States on the north, and being interested in settling said lands for the purpose of exploiting the different branches of wealth they contain, with the right which the law of July 20, 1853, concedes to us, we formally denounce them and to the extent of two thousand five hundred hectares for each one of us, praying the court under your very worthy charge to be pleased to decree the survey of said lands, the value of which, at the tariff price, we will pay in the terms the law prescribes as soon as the proper titles are issued to us. We pray you to be pleased to admit the present petition, and, what we ask being just, we protest whatever is necessary, etc.

Hermosillo, May 4, 1881.

MARIA BUSTAMANTE, S.
JOSEFA R. DE VALENCIA.

At the request of Refugio Miranda :

ANGELA GARCIA.

At the request of Jose S. Valencia :

R. ESCOBOSA.

And that what is ordered by me in the decree inserted may have its due observance, in the name of the powers of the union, I exhort

403 and require you, recommending to you on my part that as soon as these presents are received you cause them to be observed and complied with, delivering them to the new surveyor appointed, after his corresponding acceptance and oath for the discharge of the commission that is conferred upon him.

It is given at Guaymas de Zaragoza, June 20, 1881.

JESUS M. ACUTAR.

Witness :

LEONARDO G. ESCOBAR.

Witness :

FRANQUE FONTEA.

On the margin the word of the court of first instance of Arizpa.

Arizpa, July 18, 1881.—The citizen surveyor, Francisco Dadd, being present in this court under my charge there was made known to him the order of the district judge dated June 20 of the present year, in which he is appointed surveyor to make the survey, demarcation and delimitation of the vacant public land denounced by Josefa Rodriguez, Maria Bustamante and Refugio Miranda, and upon assuming his commission he said : That he hears it and accepts it

and protests faithful compliance therewith, signing with me, the present judge, and attending witnesses.

JOSE MARIA E. MORALES.
FRANCISCO DUBLÉ.

Witness:

LEONARDO GAMEZ.

Witness:

JACINTO QUIADA.

Caballona, July 24, 1881.—Having been received on this date, two summonses to the adjoining owners, Jose Maria Elias, owner of the ranch of San Pedro; Pascual Camou, who by chance is at Fronteras, the owner of the ranches of Agua Prieta, Naidenibacachi and Jesus Maria Amisa, representing the lands surveyed for 404 Rochin and associates, to be present on the 24th day of the present month at the northwest monument of the lands of Mr. Camou to defend their boundaries with their titles.

FRANCISCO DUBLÉ.

Witness:

FILOMENO ESCALANTE.

Witness:

ANGEL LUNA.

HERMOSILLO, July 11, 1881.

Mr. Pascual Camou, present.

ESTEEMED SIR: By these presents we empower you, as far as may be necessary in law, to be present in our name and in our own representation, at the survey to be made by the surveyor, Francisco Dublé, of 7,500 hectares of land we have denounced on the frontier of the State, district of Arizpe, between the ranches of Agua Prieta, Naidenibacachi and the line of the United States on the north, as per the order of the citizen district judge, obligating ourselves to be and to pass for whatever you should do in discharge of this letter of attorney.

MARIA BUSTAMANTE.

At the request of Refugio Miranda:

ANGEL GARCIA.
JOSUEA R. DE VALENCIA.

With my consent, at the request of Jose M. Valencia:

JOSUE CAMOU, Mayor.

Witness:

VICTORIANO POMPA.

Witness:

FRANCISCO CIANDARA.

In reply to your communication of date of the 20th of the present month, which I received yesterday at 5 p. m., in which you summon me for today at 8 1/2 a. m. to the S. W. monument of the lands of Mr. Camou, in front of Mule mountains, I will state to you that the 405 titles of this ranch are in Magdalena for, because of our having denounced prior to that time the overplus (demasias) of our ranch already mentioned, it was necessary for me to send them

last month to Guaymas for the purpose of establishing our rights before the district court because of the denouncement Mr. Lacy and associates made against us of the overplus (demasias) of our ranch already referred to. As the time in which you summon on me is so peremptory, it is absolutely impossible for me to be able to be present by the hour stated. I will also say to you that the hands of this ranch are bounded by those of Mr. Camou, as you will have seen from the titles of said gentleman, for which reason I do not believe there are vacant lands between this ranch and the latter, which I state to you for your information.

San Pedro, July 24, 1881.

JOSE MARIA ELIAS.

To the engineer in commission, where he may be.

On the 24th day of July, 1881, in due compliance with the order of the district judge, of the 20th of June of the present year, I proceeded with the attending witnesses to the northwest corner of the lands of Messrs. Camou, in the boundary line of the State of San Pedro, where the owners of coterminous lands and the parties interested had been summoned for the purpose of beginning the survey of the vacant land denounced by Josefa R. de Valer, Maria Bustamante and Refugio Miranda. At said place there were present Mr. Jesus Maria Ainsa and Mr. Pascual Camou, who presented a letter of attorney from the ladies who made the denouncement of the vacant land to represent them in all the proceedings of the survey, which is aggregated to these proceedings. At the same time there was received the reply of Mr. Jose Maria Elias to the summons which had been made to him to be present to defend his lines, which is also aggregated to these proceedings. Thereupon a beginning to the survey was made, placing a white monument of the shape of a cone, well leveled upon the monument known by the name of "Pile of stones," there was traced a line which runs N. 20° W. and there were measured with the double decimeter 4,000 meters reaching to the American line which separates this State from the Territory of Arizona of the United States of North America. At said point a monument was ordered placed. Then another line was traced N. 77° E. magnetic which corresponds to true north of 11° 20' and a perpendicular parallel of latitude at 1° 20' north. Said line was used as the basis for the monument of the American line, which is taken for the limit of the vacant lands which are being surveyed, and being now very late in the afternoon of the 24th of July, which I continued till the following day, which I continued till the 25th of July, and signed with the attending witnesses, which are represented by Mr. Camou, and the owners of coterminous lands.

FRANCISCO DUBLÉ.
PASCUAL CAMOU.
J. M. AINSA.

Witness:

FILOMENO ESCALANTE.

Witness:

ANGEL LUNA.

On the 25th day of July of said year, accompanied by the same persons as the day before, the operation of survey was continued, and not being able to employ direct measurements, on account of the roughness of the country, triangulation was used, measuring the distance there is from said monument to the northeast monument of the lands of Mr. Camou, on the slope of the Gallardo hill (cerro), which was found to be at 920 meters from the American
 407 monument on the course S. 5° E. From this point another line was traced S. 79° W., which measured 13,140 meters ending at the monument called that of the "Little hillock" (lomita). From this point another line was traced S. 69° 30' W., which measured 29,680 meters ending at the monument called "Pile of stones," where beginning was made to the survey, closing the perimeter of the figure. The last two lines were traced in agreement with the map and titles of his lands which Mr. Camou presented. The area enclosed by said lines is 7,004 hectares, 65 ares, 41 centiares, which in ancient units are equivalent to three sitios for cattle and nine thousand eight hundred and ninety-eight ten-thousandths of another, the value of which, at the price of 12 cents, according to the tariff corresponding to this State, is eight hundred and forty dollars, fifty-six cents. The direction of the lines is magnetic and the variation of the needle determined from the amplitude of the sun is thirteen degrees, six minutes, thirty seconds northeast. The surface of the land, in its greater part, is level, it has excellent pasture, is broken in the eastern and western parts, is very scarce of timber and well adapted to raising cattle. With which the operations of this day were concluded, which I caused to be entered as a minute and signed with the attending witnesses, Mr. Camou as owner of coterminous lands and as representative of the parties in interest and Mr. Jesus Ainsa in representation of the vacant land surveyed for Mr. Cirilo Rochin and sons.

FRANCISCO DUBLÉ.
 PASCUAL CAMOU.
 J. M. AINSA.

Witness:

FILOMENO ESCALANTE.

Witness:

ANGEL LUNA.

On the 26th day of said month and year, the partition of
 408 the vacant lands denounced was proceeded with, assigning to Josefa R. de Valencia her lot in the western part of the land, which is bounded by the lands of San Pedro on the west to the extent of 4,000 meters: on the north by the Territory of Arizona of the United States to the extent of 7,640 meters: on the east by the lot of Maria Bustamante to the extent of 3,300 meters and on the south by the lands of Messrs. Camou to the extent of 5,375 meters. The area of this lot is 2,334 hectares, 88 ares and 47 centiares. The lot corresponding to Maria Bustamante is bounded on the west by the lot of Mrs. Valencia to the extent of 3,300 meters: on the north by the American line to the extent of 9,200 meters: on the east by the lot

of Mrs. Miranda to the extent of 2,100 meters and on the south by lands of Messrs. Camou to an extent of 9,550 meters. Its area is 2,334 hectares, 88 ares and 47 centiares. The lot belonging to Refugio Miranda has for boundaries: on the west the lot of Mrs. Bustamante to the extent of 2,100 meters: on the north the American line to the extent of 26,810 meters: on the east it is bounded by the vacant land surveyed for Rochin and associates, and is separated by a line of 920 meters and on the south it is bounded by the lands of Mr. Camou, limited by two lines, the one of 13,140 meters starts from Gallardo hill (cerro) and ends at the monument of the "Little hillock" (lomita) and the other of 14,255 meters in length starts from the "Little hillock" (lomita) and terminates at the southwest corner of Mrs. Bustamante. The area of this lot is 2,334 hectares, 88 ares and 47 centiares, with which this act of survey was concluded, which I signed with the attending witnesses, the parties in interest and owners of adjoining lands, with the statement that I confined myself strictly to the laws on the matter and the order of the district judge.

FRANCISCO DUBLÉ.

409 Witness:

FILOMENO ESCALANTE.

Witness:

ANGEL LUNA.

PASCUAL CAMOU.
J. M. AINSA.

FRONTERAS, *August 18, 1881.*

These proceedings of survey being concluded, forward them to the district judge in conformity with what is ordered.

FRANCISCO DUBLÉ.

Witness:

FILOMENO ESCALANTE.

Witness:

ANGEL LUNA.

Guaymas, September 12, 1881.—The proceedings of survey being received they are thereupon aggregated. As article 16 of the law of July 22, 1863, provides, inquire of the office of the chief of the treasury in the State if the public treasury is in possession of the land denounced. The district judge in Sonora ordered and signed it with attending witnesses.

AGUILAR.

Witness:

LEONARDO G. ESCOBAR.

Witness:

ENRIQUE FONTES.

On the same date notice of the foregoing order was given to citizen Juan P. M. Camou, attorney for the denouncers, who, when cognizant of it, said: That he hears it and signs it.

AGUILAR.
J. P. M. CAMOU.

Witness:
LEONARDO G. ESCOBAR.

Witness:
ENRIQUE FONTES.

On the margin the seal of the office of the chief of the treasury.

Citizen district judge:

After examination of the present proceedings of denouncement of the vacant public land situated between the ranches of Agua Prieta and Naidenibácachi in the district of Arizpe by Josefa R. de 410 Valencia, Maria Bustamanto and Refugio Miranda, the antecedents in this office have been examined to see if it has been disposed of to any person, and the archives relating to the department of public works being so incomplete, it does not know whether the public treasury is or is not in possession of the land.

Guaymas, October 14, 1881.

AGAPITO SILVA.

Guaymas, November 17, 1881.—As the office of the chief of the treasury does not know, according to the foregoing report, that the public treasury is in possession of the land that is denounced, as provided in article 17 of the law of July 22, 1863, publish said denouncement for three consecutive times in the official periodical of the State, that those who consider themselves with a better right may appear in this court, in person or by an instructed and paid attorney, to deduce it within the term of thirty days counted from the first publication, and if they do not do so in the time set, said land will be adjudicated to the denouncers. The district judge in Sonora ordered and signed it with attending witnesses.

AGUILAR.

Witness:
ENRIQUE FONTES.

Witness:
G. RODRIGUEZ.

Thereupon notice of the foregoing order was given to citizen Juan P. M. Camou, and when he was cognizant of it he said: That he hears it and signs it.

AGUILAR.
J. P. M. CAMOU.

Witness:
ENRIQUE FONTES.

Witness:
G. RODRIGUEZ.

411 On the same date and in compliance with the foregoing order, the following edict was ordered published in the official periodical of the State :

By these presents there are summoned and a term set for those who consider themselves with a better right to certain vacant, public lands situated in the district of Arizpe, between the ranches of Agua Prieta, Naidenibácachi and the line of the United States on the north, denounced by Josefa Rodriguez, Maria Bustamante de Salazar and Refugio Miranda, who must present themselves in this district court, in person or by instructed and paid attorney to deduce the better right they believe they have, which will be done within the term of thirty days counted from the first publication of the present edict, which will be inserted three consecutive times in the official periodical of the State, and if they do not do so in the term set, said lands will be adjudicated to the denouncers, which I enter as a minute.

AGUILAR.

Thereupon the order was complied with. Attest.

December 31, 1881.—The undersigned judge certifies that he has seen published for the first time in the official periodical of the State, La Constitucion, No. 63, corresponding to November 26 last, the foregoing edict, and that no copy of said periodical is aggregated to the present proceedings because none comes except the one for the collection of the court, which is entered as a minute.

AGUILAR.

Guaymas, January 5, 1882.—Forward these proceedings to the office of the chief of the treasury in the State for him to make the liquidation of the land in accordance with the tariff now in force and when done, proceed to the adjudication of the land in
412 favor of the denouncers. The citizen district judge in Senora ordered and signed it with attending witnesses.

AGUILAR.

Witness :

LEONARDO G. ESCOBAR.

Witness :

G. RODRIGUEZ.

On the same date notice of the foregoing order was given to citizen Juan P. M. Camou, attorney for the parties in interest, and when cognizant of it he said : That he hears it and signs it.

AGUILAR.

J. M. P. CAMOU.

Witness :

LEONARDO G. ESCOBAR.

Witness :

G. RODRIGUEZ.

On the same date the order was complied with.

Liquidation made by the office of the chief of the treasury for the payment of the lands adjudicated to Josefa R. de Valencia, Maria Bustamante, and Refugio Miranda.

Value of 7,004 hectares, 65 ares, 41 centiares, at the rate of 12 cents, according to the tariff of 1881, when the denouncement was made.....		\$840.56
In cash to the federal treasury.....	\$280.18	
In bonds of the debt.....	140.10	
In cash to the State treasury.....	280.18	
In credits.....	140.10	
Equal to.....	\$840.56	\$840.56

Guaymas, January 21, 1882.

J. SUAREZ, M., *Clerk*.

Guaymas, March 2, 1882.—Having examined the present proceedings of denouncement made in total compliance with the general laws of July 22 and August 2, 1863, on the occupation and disposition of public lands; having examined the report made by the office of the chief of the treasury from which it appears that said office does not know whether the public treasury is in possession of the land, in virtue of which the denouncement was ordered published that it might come to the knowledge of everybody and considering that after said publication was made no adverse claimant has appeared to allege a better right and sufficient time having elapsed for any one to have appeared before this court, had there been any, the undersigned judge in compliance with articles 17, 18 and 19 of the law of July 22, already referred to, decrees: There are adjudicated in possession, and without prejudice to a third person, to Josefa R. de Valencia, Maria Bustamante and Refugio Miranda, seven thousand four (7,004) hectares, sixty-five (65) ares and forty-one (41) centiares of vacant, public land, situated in the district of Arizpe, bounded on the north by the United States of America, on the east by public lands denounced by citizen Cirilo Rochin and associates, on the west by San Pedro and on the south by the lands of Messrs. Camou, which public land is divided into three lots of two thousand three hundred and thirty-four hectares, eighty-eight ares and forty-seven centiares for each one of the denouncers and is shown on the map made and in the proceedings of survey. 2nd.—That the present adjudication shall have no effect whatever unless it is approved by the department of public works to which, through the executive of the State, a testimonio of these proceedings and a copy of the corresponding map, shall be transmitted. 3rd.—Delivery of the land and of the corresponding title shall not be made to the parties in interest until after said approval and after proof that the full price of the land has been paid lawfully in the proper office in accordance with the tariff in force at the time of the de-

nouncement. The district judge in Sonora decreed and signed it with ordinary attending witnesses.

414

JESUS M. AGUILAR.

Witness:

ENRIQUE FONTES.

Witness:

G. RODRIGUEZ.

On the same date notice of the foregoing order was given to citizen Juan P. M. Camou who when cognizant thereof said: That he hears it, is satisfied and signed it.

AGUILAR.

J. P. M. CAMOU.

Witness:

ENRIQUE FONTES.

Witness:

G. RODRIGUEZ.

On the 7th of said month and on fifteen written leaves a testimonio of these proceedings and a copy of the respective map were forwarded to the department of public works for its approval. Attest.

On the margin a seal which says: Republic of Mexico, free and sovereign State of Sonora. Section 5th.

Together with your communication of the seventh instant there was received in this office the authenticated copy of the proceedings of denouncement of a tract of public land situated in the district of Arizpe, made by Josefa Rodriguez, Maria Bustamante Salazar and Refugio Miranda, which denouncement is forwarded with a report, on this date, to the department of public works, in compliance with article 18 of the general law of July 20, 1863, which, in reply, I have the honor to state to you.

Liberty in the constitution. Hermosillo, March 8, 1882.

CARLOS R. ORTIZ.

PEDRO OCHOA, *Secretary*.

To the district judge in the State, Guaymas.

415 On the margin a seal which says: Department of public works, colonization, industry and commerce. Section 1st. No. 4584.

The President of the Republic has been pleased to approve the adjudication decreed by that district court in favor of Josefa Rodriguez, Maria Bustamante y Salazar and Refugio Miranda, of a tract of public land situated in the district of Arizpe in that State. In consequence the corresponding titles of property have been issued to them, which documents are forwarded to you for you to deliver them to the parties in interest according to article 19 of the law now in force and to order possession of the land given to them as soon

as they show that they have paid the price thereof and that of the stamps on the paper on which the titles are drawn.

Liberty and constitution. Mexico, September 19, 1882.

By order of the secretary:

M. FERNANDEZ,
Chief Clerk.

To the district judge in the State of Sonora, Guaymas.

On the margin a seal of the office of the chief of the treasury.
No. 1253.

I have the honor to forward to you two certificates of payment, one for the value of \$840.54c. which shows the payment for a tract of public land adjudicated to Josefa Rodriguez and associates, and the other for \$3.90c. in payment of the stamps affixed to the title.

Liberty and constitution. Guaymas, December 23, 1882.

AGAPITO SILVA.

To the district judge, present.

416 On the margin the seal of the office of the chief of the treasury. Certificate No. 108.

I, the chief of the treasury in Sonora, certify: That at leaf 68 of the General Book of Funds of this office, corresponding to the present fiscal year, there is an entry of the following tenor: 1882, December 23, at section XIX, article 1st. Proceeds from public lands, eight hundred and forty dollars, fifty-four cents paid into this office by the attorney of Josefa Rodriguez, Maria Bustamante y Salazar and Refugio Miranda, for a tract of public land situated in the district of Arizpe, which has been adjudicated to them, and which payment was made in the following form:

To the federal treasury in cash	\$280.18
To the federal treasury in bonds.....	140.09
To the State treasury in cash and bonds	420.27

Certificate No. 115	\$840.54
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and in witness thereof the present certificate is issued in Guaymas on the twenty-third of December, 1882.

AGAPITO SILVA.

On the margin a seal of the office of the chief of the treasury.
Certificate No. 109.

The chief of the treasury in the State of Sonora certifies: That at leaf 68 of the General Book of Funds of this office corresponding to the present fiscal year, there is an entry of the following tenor: 1882, Decembr 23. For transmission to the general treasury of the federation three dollars ninety cents which is paid into this office by the attorney of Josefa Rodriguez and associates, the cost of the stamps affixed to the titles that were issued to them in the adjudication of a tract of public land situated in the district of Arizpe. Certificate No. 116. \$3.90.

417 And in witness thereof the present certificate is issued in Guaymas, on the 23rd of December, 1882.

AGAPITO SILVA.

On the margin a fifty-cent stamp duly canceled.

I have received from the district court in the State, as the attorney for Josefa Rodriguez, Maria Bustamante Salazar and Refugio Miranda, three titles of property in a tract of public land situated in the district of Arizpe, issued by the citizen President of the Republic, on the 19th of September last passed, in favor of said ladies.

Guaymas, December 23, 1882.

J. P. M. CAMOU.

Is a faithful and exact copy of the original proceedings that exist in the archives of this district court. Goes compared and with the corresponding stamps canceled, and is issued in compliance with the order in the decree of February 22 of the current year made in the proceedings instigated in the petition for said copies by the attorney of the United States of America for the land court, to which I certify as secretary of the district court in Sonora, on the 8th of March, 1899.

GUILLERMO P. COTA. [RUBRIC.]

Seal reading: District court in Sonora, Guaymas.

(Form 88.)

Consular # 188.

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES.

March 11th, 1899.

418 I, Frank M. Crocker, consular agent of the United States at Guaymas, Mexico, do hereby certify that the signature of Guillermo P. Cota, secretary of F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mexico, this day and year next above written, and of the Independence of the United States the 124th.

FRANK M. CROCKER,

U. S. Consular Agent.

[SEAL.]

Trans. H. O. F.

March, 1899.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk,*

By ———, *Deputy.*

DEFENDANTS' EXHIBIT "C."

Copy

Of a deed of sale, under a contract to resell, which the citizens Jose Juan, Jose Maria, and Manuel Elias, and the mother of the same, Dona Guadalupe Perez de Elias, have executed in favor of the Senores Camou, Hermanos, (Brothers) of the lands of San Pedro, embracing thirty-two square leagues, in the ranchos of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar and San Rafael del Valle.

In the city of Urea, on the 25th day of the month of July, 1862, before me, Ignacio Lopez, judge of the first instance of the district, and the witnesses mentioned, appeared the citizens, Jose Juan, Jose Maria, and Manuel Elias, and their mother, Dona Guadalupe Perez de Elias, and also the citizen Manuel Morales of this vicinity, representing the Senores Camous, Brothers, of Hermosillo, whose power he presented, and said: That for their mutual interest, they had agreed in the sale, with a contract for reselling, thirty-two square leagues of land situated in San Pedro, continuing to the ranchos of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar and San Rafael del Valle, in the jurisdiction of Santa Cruz, Fronteras, and a part within the American lines; and for the sum of twelve thousand dollars, in silver or gold, payable within three years, from the present date; with the condition, that either party, with common consent, may freely resell to another person or persons, the said thirty-two square leagues, at any time, before the expiration of the said three years; and if during this time, such sale be made, the nett profit ensuing therefrom, shall be divided equally between the Senores Camous and Elias; but if the Senores Elias should desire to redeem the property, before the expiration of the said three years, they shall pay to the said Camous
 420 Brothers, the amount that they have disbursed, twelve thousand dollars, with interest thereon, at the rate of one per cent. per month, together with the taxes and costs of this sale, which they will pay as they have stipulated.

And so long as the sale is not made, nor the three years have expired, the Senores Elias shall remain in possession of the said thirty-two leagues, enjoying the products of the same. And for the purpose of carrying out this sale, in due form of law, the said Don Jose Juan, Don Jose Maria, and Don Manuel Elias, and their mother, Dona Guadalupe Perez de Elias, hereby sell to the Senores Camous, Brothers, the thirty-two square leagues, which include the said ranchos of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar and San Rafael del Valle, for the sum of twelve thousand dollars, which they have decided to their entire satisfaction, under the expressed condition, that if within the term of three years, the vendors, or their heirs should desire to redeem the same, and shall return the price received, in silver or gold, with interest thereon, at the rate of one per cent. per month, then they shall be completely restored to the ownership of the property, of which they now resume the possession; either party in the meanwhile being able, with the consent of the other side, to sell the said lands, in

which case the net profits ensuing from such sale, shall be equally divided between the parties, the vendors satisfying the purchasers, for the taxes and costs of sale, with which they are now charged. But, should the said time expire, without the said price being returned, then the said Senores Camous, will have the right to dispose of the said lands, as the true owners thereof, without the necessity of issuing citation, or taking any proceedings in the matter whatever; the Senores Elias, declaring that they have not sold,

421 or alienated the said thirty-two square leagues of land, and that the same is free from all responsibility, and encumbrances, and as such, they sell the same, with all the uses, servitudes and other things thereunto belonging, which have pertained, pertain, or may pertain to them according to law, for the said sum of twelve thousand dollars. They also declare, that the said sum of twelve thousand dollars, is the just and true value of said property, the ownership of which they now denounce, if within the term of three years, they be not redeemed.

And finally they obligate themselves to warrant the title to said land. And in the same act Don Manuel Morales declares, that the respective titles of said property of the ranchos of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar and San Rafael del Valle, had been received by his principals, the Senores Camous Brothers, and said, that he accepted this deed in all its parts, both parties obligating themselves, the Senores Elias, with their own property, and the Senor Morales, obligating the property of his principals the Senores Camou Hermanos, to the fulfillment of all that is contained in this writing, that is, the property they now have, and such as they may hereafter acquire, declaring, that no deceit, or fraud, has been used, and that should there have been, in a large or small amount, they make mutual donation thereof firm and irrevocable, renouncing the time allowed them by law, to make such claim. Thus the parties declared and signed, which parties I certify that I know, reminding them, that the instrument should be registered in the inspector's office of mortgages, within the time required by law; the citizens Jose Maria Famago, Manuel Y. Mornier and Hilario Rubio, residents of this city, being witnesses; which I attest.

422

IGNACIO LOPEZ.

JOSE JUAN ELIAS.

JOSE MA. ELIAS.

MANUEL ELIAS.

GUADALUPE PEREZ DE ELIAS.

MANUEL MORALES.

Instrumental witnesses:

JOSE MA. FAMAGO.

Instrumental witness:

MANUEL Y. MARTINEAU.

Instrumental witness:

HILARIO RUBIO.

Assist.:

ANTONIO TERAN Y. PERALTA.

Assist.:

IGNACIO RIBES.

Copy of the Power.

In the city of Hermosillo, on the 14th of July, 1862, before me, the notary, and the assistant witnesses, who are mentioned, appeared the Senores Camous Brothers, who are more than twenty-one years of age, residents of this place, who having presented a certificate showing that they had duly paid their taxes for the present month, to which I certify, returning said documents to them; who said:

That they give and confer all their power, ample and sufficient as the law may require, to Don Manuel Morales, of the town of Ures, he being also of lawful age, especially and particularly that he in their names, and representing their persons and rights, may accept and sign before a notary public, *on* in the absence, of such officer before a competent judge, the public instruments of writing, that are to be executed in that city, in favor of the parties giving this power, by Don Manuel V. Escalante, son, as attorney of his wife, Dona Mariana Gaudana, as a mortgage of the part represented by her in the hacienda of Santa Rita, Don Francisco Gaudana, father, another instrument in writing, also a mortgage on the hacienda of San Felipe and Don Jose Juan Elias, his wife and mother and the other sons, an instrument of sale, with contract, for resale of thirty-two leagues of land in San Pedro. The said Morales taking care that said instrument be drawn with all the formalities and solemnities necessary to give binding force and effect to the contracts therein set forth, in respect to the times, amounts and other conditions, which they have communicated; on which basis, the makers of this instrument, will accept as firm and valid, all that may be done under the same
424 in their name; for the fulfillment of which obligating their present and future property, as if it had by definitive sentence passed by a competent tribunal, without appeal.

Thus executed and signed by the Senores Camous Brothers, whom I certify that I know, Don Jesus Lopez, Don Diomar Gonzales and Don Agustin Munoz being witnesses, which I attest.

CAMOUS BROTHERS.

Witness:

DIOMAR GONZALES.

Witness:

JESUS LOPEZ.

Witness:

AGUSTIN MUNOZ.

Signed before me:

FRANCISCO GOMEZ.

Notary Public.

I, the undersigned, notary public of the State, and a resident of this city, was present and the execution of this instrument, in witness of which, I give this original copy, on paper of the second seal, for the current bieno, which I sign, the original from which this was taken, remaining registered on paper of the 3rd seal, upon

which is noted the taking of this copy on the 14th of July, 1862, to which I certify.

In testimony of the truth—A sign of the cross and at the foot of the same, the initials F. G. M.

FRANCISCO GOMEZ MAGEX,

Notary Public.

Triple fees without the paper..... \$12.35

MAGEX.

The foregoing was copied from the record, on the day of its execution, with which it has been faithfully compared and corrected as the same is found on the four foregoing leaves of paper, for the curren bieno; the first and last leaves being paper of the 1st seal, and the intermediate leaves, being paper of the 3d seal, which I authorise and sign, with the assisting witnesses.

In testimony of the truth:

425

YGNACIO LOPEZ.

Assistant:

PERALTA.

Assistant:

IGNO. RITES.

Office of the general treasury of the State of Sonora.

URES, July 28th, 1862.

Don Jose Juan Elias, having paid the sum of six hundred dollars as a tax on the transfer of ownership caused by the sale of the lands of San Pedro, for the sum of \$12,000. Let the administrations of San Ignacio and Arizpe be informed, of the receipt in this office and in the gefatura de hacienda, of the said sum, one-half in each, for the said tax, for the entries that are to be made of the same in said offices, this entry being held as legal and sufficient before the authorities of the State.

P. A. DEL C. G. DE H.
G. V. DE SANDOVAL.

426 Don Manuel Morales, as attorney of the Senores Camou Brothers, of Hermosillo, to the court of first instance of this capital, Dr.

For the authorization of an instrument of sale under a contract for resale executed in favor of the Senores Camou Bros by the citizens Jose Juan, Jose Ma. and Manuel Elias, and their mother, Dona Guadalupe Perez Elias.

TriPLICATE fees.....	\$13.00
Copy.....	4.30
For two seals, 3d of —.....	1.00
For one sheet paper 1st seal and another of 3d seal used in this copy.....	20.30

URES, July 25th, 1862.

IGNACIO LOPEZ.

Governor V. Sandoval, in charge of the gefatura of the hacienda of the State of Sonora—

Certifies that there not being in the administration of sealed paper of this capital, either of the classes required by articles 2, 3 and 4 of the law of the 16th of December last. The citizen Jose Juan Elias, has deposited in this office \$150 in money as a deposit of the product of the federal constitution due from said individual upon the sum of \$200 tax on the transfer of ownership by the sale which he has made for the sum of \$12,000 of the hacienda and lands of San Pedro, to the Senores Camou Bros, said deposit being made under article 5th of the said law. In witness whereof, I give this in Ures on the 28th of July, 1862.

G. V. SANDOVAL.

427

ARIKUP, August 19th, 1862.

This instrument of sale of the lands of San Pedro by the Senores Elias, to the Senores Camou & Brothers, remains registered in the Book of Tuna de Razon, in this office, on folio 3d frente.

In witness whereof, I authorize and sign with the assistant witnesses, as judge "sustituto," in the absence of the judge "propietario," in the juzgado of this district.

(Assistant)

TOMAS G. PICO.

(Assistant)

GUILIBALDO JUERESA.

MAGDALENA, August 25th, 1862.

The instrument, in testimony of the sale of the lands of San Pedro by the Senores Elias, to the Senores Camou Bros, remains registered in the Book of Mortgages, in this office.

In witness whereof, I sign this, with the assistant witnesses (on leaf 28).

MIGUEL RIBERA.

Ass't:

T. ORTEGOSA.

Ass't:

DOMINGO MENDOZA.

Filed in the office of the clerk, court of private land claims, May 31, 1869.

JAS. H. REEDER, Clerk,

By — — —, Deputy.

1869, MARCH 17, AT GUAYMAS.

Declarations of Jose Ma. Elias, Manuel Elias, Guadalupe Perez de Elias, and Bernardina L. de Elias in the court of the district of Guaymas, concerning the lands on the San Pedro, Territory of Arizona, in favor of Canon Hermanos.

(Seal Court of the District of Sonora.)

Proceedings of Information Taken at the Request of Mr. Juan P. Canon.

The judge of the district of Sonora.

(Signed) the citizen Jose Bustamante.

Second class—Republic of Mexico, for the biannual of one thousand eight hundred and sixty-eight and sixty-nine—50 cents—sub-administration of stamp paper, Guaymas—the citizen judge of the district—Juan P. Canon, senior partner and as the representative of the house of Canon Hermanos, before you, making the proper protest, petitions; that, having to prove certain facts in connection with the various lands, the greater portion of which are in Arizona Territory of the United States, and which the said house bought from Mrs. Guadalupe Perez, widow of Mr. Rafael Elias, deceased, and from his sons, Mr. Jose Maria, Mr. Manuel, and Mr. Jose Juan Elias; that you summon Jose Maria Elias, that he may declare for himself and as the representative of his mother Mrs. Guadalupe Perez and his brother Mr. Manuel Elias, all that he knows regarding the questions that may be put to him, and also Mrs. Bernardina Lucero, wife of Mr. Jose Juan Elias, deceased; the citizen judge of the district, and the collector of the internal revenue will certify to the same.

429 1st. Let Mr. Jose Maria Elias, for himself and as the representative of Mrs. Guadalupe Perez and Mr. Manuel Elias (whose power he will present): If it is true that if he ratifies the sale to the house of Canon Brothers, of the lands called "Naidebacachi" Agua Prieta and Santa Barbara, included in one title, and those of San Rafael del Valle, in the jurisdiction of the presidio of Santa Cruz in another title, and lastly, included in a third title, the places named Agua de Baltazar, la del Gato, la de Tomas Romero and that of Las Mesteñas.

2d. Let him say how they acquired those lands; if by purchase from other persons or by inheritance as the only heirs.

3d. Let him say if his father and grandfather used to sign their name, sometimes only Rafael Elias and at other times prefix the name of Jose or add the surname of Gonzales, and that notwithstanding those variations, they always meant the same person.

Let the same questions be put to the widow, Mrs. Bernardina Lucero; and after these proceedings are concluded (adding) the certificates of the two aforesaid dignitaries, that an attested copy

(thereof) be given to him. Protesting as he does protest not to proceed from malice and other necessities, etc.

Guaymas de Zaragoza March the seventeenth of one thousand eight hundred and sixty-nine. J. P. CAMOU.

Received the same date at three o'clock of the afternoon. I take notice thereof. A scroll.

Guaymas de Zaragoza, March seventeenth of one thousand eight hundred and sixty-nine.

The present writing having been received let the testimonio be obtained and let the respective certificates be issued, and the same being concluded let the corresponding copy be given him such as he asks. The judge of first instance, acting as judge of the district of Sonora, so ordered it and signed it with his assistants:
JOSE BUSTAMANTE.

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

The citizen Jose Maria Elias being present, the citizen judge administered to him the legal protest, upon which he promised to tell the truth in all that he knew and might be asked; and being interrogated as to his name, age, condition, business and residence said: That he was named as aforesaid, of the full age of forty years, married, an employé (of the government) and was a resident of this port—being questioned concerning the three points in the foregoing writing, said: That it is true that the lands therein mentioned were sold to the house of Camou Hermanos, represented at this port by Mr. Juan P. Camou as senior partner of it, and which sale he ratifies for himself and in the name of his mother Mrs. Guadalupe Perez and his brother Mr. Manuel Elias by virtue of the special power which he presents and delivers to be used as it is proper to do; and he answers to the second query, that they acquired all the three properties by inheritance of their deceased parents, being the only heirs those already mentioned; and as to the third point, he declares, that his grandfather, as well as his father, had the same name of Rafael Elias, that it is true that these sometimes signed themselves adding the name of Jose, and at other times the surname of Gonzales; but notwithstanding all these variations it always meant the same person, it being the use in this country to do so, many times to distinguish each other from other persons who have the same name, being relations or not.

This deposition being concluded, it was read to him and he ratified it, signing with me and my assistants.

BUSTAMANTE,
JOSE M. ELIAS.

431

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

On the same date I established the court, with my assistants, at the house of Mrs. Bernardina Lucero, to whom I administered the proper protest, and upon which she offered to tell the truth in all that she knew and might be asked, and being asked concerning her name, age, and residence, said: That she was named as aforesaid, of the full age of thirty years, widow of her deceased husband, Jose Juan Elias, and resident of this port—Being questioned concerning the points in the foregoing writing, said: It was true that her deceased husband, in unison with her mother-in-law, Mrs. Guadalupe Perez, and her brothers-in-law, Jose Maria and Manuel Elias, had sold the lands whose names are specified in the already repeated writing, to the house of Camou Hermanos; it is also true that the lands were acquired by the aforesaid persons from their deceased parents, as the only heirs; she also is acquainted with the fact that her grandfather and father-in-law, sometimes signed only the name of Rafael Elias, and other times added the name of Jose, and others the surname of Gonzales, but that it was always the same person, with which she believes to have answered all the questions, ratifying the matter so declared, she signed with me and my assistants.

BUSTAMANTE.

BERNARDINA L. DE ELIAS.

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

Julian Escalante, collector of the internal revenue in the State of Sonora.—I certify as far as I can and the facts permit it, (this sentence is in the 1st person, the rest in the 3d person) that he knows by hearsay from other persons of the sale made by Messrs. Elias to the house of Camou Hermanos, of the lands specified in this writing shown to him, he also knows that the persons enumerated in
432 the said process are the legal heirs of Mr. Rafael Elias and from whom they acquired the lands.

I make the present (declaration) at the request of the interested party, Mr. Juan P. Camou in this port of Guaymas de Zaragoza, on the seventeenth day of March, of one thousand eight hundred and sixty-nine, signing it in the presence of the citizen judge of the district.

JULIAN ESCALANTE.

JOSE BUSTAMANTE,

Judge of First Instance and ex Officio of the District.

(Here again he talks in the first person.)

I certify: That the sale of the lands expressed in the foregoing proceeding, is true and real, and was made to the house of Camou Hermanos by Mrs. Guadalupe Perez de Elias and her sons Jose Maria, Manuel, and Jose Juan Elias, deceased; he also certifies that he knows these persons and are the legal heirs of Rafael Elias, deceased (and) lastly he knows by reason of friendly and family relations and by epistolar correspondence with Mr. Rafael Elias father

and son, that these two used to sign sometimes only the name and surname aforesaid, and other times the name Jose and surname of Gonzales; but it was the same person, as may be seen by some letters he still has of these persons—making the present certificate at the request of Mr. Juan P. Camou, at the port of Guaymas de Zaragoza, on the seventeenth day of the month of March, of one thousand eight hundred and sixty-nine, which I certify to with my assistants.

JOSE BUSTAMANTE.

Assistant:

EDUARDO MORALES.

Assistant:

MARIANO GUERENA.

Guaymas de Zaragoza, on the seventeenth of March, of one thousand eight hundred and sixty-nine.

Let notification of all that has taken place be given to the district attorney, so that what he says may be done. The judge of
433 the district, *ex officio*, so ordered and decreed, signing with the assistants.

BUSTAMANTE.

J. P. CAMOU.

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

Citizen judge of the district:

The district attorney who subscribes, has examined the foregoing information, which he finds to be according to law, the declaration of the deponents therein being entitled to full faith and credit on account of their standing and high political character. As for the power of attorney presented by the citizen Jose Maria Elias, as it is a special power and only for the purpose of the present case, it should be joined to the process, giving to the interested party, Mr. Juan P. Camou, a copy of it as well as of the rest of the proceedings, as he petitioned.

Guaymas de Zaragoza, March the seventeenth of one thousand eight hundred and sixty-nine.

JOSE MONTEVERDE,

Attorney-at-law.

Guaymas de Zaragoza, March the seven-enth of one thousand eight hundred and sixty-nine.—In accordance with the opinion of the citizen district attorney, let the power be joined to the foregoing process, giving an attested copy of all the proceedings to, as ordered in the first part of it, and as it is prayed for by the interested party, Mr. Juan P. Camou—the judge of the district of Sonora so ordered and signed it with the assistants.

JOSE BUSTAMANTE.

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

On the same date that citizen district attorney was notified of the foregoing proceeding, and he said: That he heard it, and signed it with me and the assistants.

BUSTAMANTE.
MONTEVERDE.

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

434 Forthwith Mr. Juan P. Camou being present, was notified of the foregoing proceedings and he said: That he heard it and he signed with me and my assistants.

BUSTAMANTE.
J. P. CAMOU.

Assistant:

MARIANO GUERENA.

Assistant:

EDUARDO MORALES.

I certify, that as ordered the power was joined to the proceedings, in witness thereof I put my scrawl. A scrawl.

Second class—Republic of Mexico—for the biannual one thousand eight hundred and sixty-eight and sixty-nine—four reals—chief administration of the stamp paper in Sonora—

Subadministration of the stamp paper—Guaymas—In the town of Tecoripa, district of Hermosillo, in the State of Sonora, on the third day of the month of March of one thousand eight hundred and sixty-nine, before me, the citizen Jose Nido, local judge of this same town, the witnesses who will be named at the end, in default of clerk, appeared Mrs. Guadalupe Perez, and her son Manuel Elias, of full age, and after having proven to be solvent with the public treasury, and the second enrolled in the national guards, they said: That they give and confer all their power, full and complete, as far as is required by law, to be the strongest to be valid, to the citizen Jose Maria Elias, son of the first and brother of the second, also of full age, resident of the port of Guaymas, so that in their name, representing their persons, rights and shares, he may present himself before the judicial authority, to justify and ratify the debenture deed made by the undersigned in unison with Jose Juan Elias, deceased, and Jose Maria Elias, sons of the first and brothers of the second, in favor of the commercial house of Hermosillo, of Camou Hermuaos, which deed dated July 25th of 1862, was executed at Ures, the capital of the State, including the following
435 lands: One title for four sitios, called San Rafael del Valle; another of ten and one-third sitios, called Agua de Baltazar, del Gato, de Tomas Romero, and of Las Mestenas; and lastly another of eighteen sitios and twelve and one-half caballerias of land called Naidenibacachi, Agua Prieta and Santa Barbara, which lands, most of them, are located in Arizona, in the territory of the United States, and the other on the frontier of this same State.

Likewise they give ample faculties and sufficient instructions, that he may make such explanations and declarations that may be asked or demanded on the subject, by Mr. Juan P. Camou, copartner of said house.

Offering to hold as firm and valid whatever, by virtue of this special power, may be done by said son and brother, Jose Maria Elias, binding themselves solemnly to stand by and accept, all that by said power he may say or do. So they said it and signed it, whom I certify I know, being witnesses the resident citizens of this town, Jose Maria Zuares, Santiago Lucero, and Jose Maria Perez.

JOSE NIDO.

GUADALUPE PEREZ.

MANUEL ELIAS.

Witness :

JOSE MARIA ZUARES.

Witness :

SANTIAGO LUCERO.

Witness :

JOSE MARIA PEREZ.

Assistant :

SANTOS MARINO.

Assistant :

SANTIAGO LUCERO.

Taken from the record today, the same day of its execution in the two useful leaves of stamp paper, second class of the current biannual. It has been faithfully copied, corrected and made even, which I certify to and sign with my assistants in the usual form.

JOSE NIDO.

Assistants :

SANTOS MARINO.

Assistant :

JOSE MARIA ZUARES.

Taken from the original proceedings recorded in the archives of this court of the district, from which it is faithfully copied,
436 and corrected in these six leaves of stamp paper, third class of the current biannual (fiscal year) which I authorize and sign at Guaymas de Zaragoza, on the eighteenth day of the month of March of one thousand eight hundred and sixty-nine, which I authorize and sign with the assistants.

In witness of the truth :

(Signed)

JOSE BUSTAMANTE.

Assistant :

MARIANO GUERENA.

Assistant :

EDO. MORALES.

I certify that the foregoing signature is the same used in public and private instruments by the citizen judge of the 1st instance. Guaymas de Zaragoza, March 22, 1869.

[Seal Prefecture of Guaymas.]

(Sig.)

P. S. BUSTAMANTE

Consular certificate and notary's certificate.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk*,

By ———, *Deputy*.

437

DEFENDANTS' EXHIBIT "D 1a."

Title of a grant of four sitios of land included in the tract of San Rafael del Valle, jurisdiction of the presidio of Santa Cruz, by the general treasury of the State of Sonora, in favor of citizen Rafael Elias Gonzalez.

Jose Maria Mendoza, treasurer general of the free, independent and sovereign State of Sonora:

Whereas article 11 of the sovereign decree, No. 70, of the general congress of the union, dated August 4, 1824, cedes to the States the revenues (rentas) which the federation did not reserve to itself by said law, one of which is that from lands within their respective districts, which (revenues) therefore belong to them, and (whereas) the honorable constituent Congress of what was the united State of Sonora and Sinaloa, enacted, for the sale thereof, law No. 30 of the 20th of May, 1825, and the successive legislatures other decrees relating thereto, citizen Rafael Elias, of the vicinage of this capital, having, on the 12th of May, 1827, made to the general treasury of what was the united State formal denouncement of the lands known as San Rafael del Valle, situated in the jurisdiction of the presidio of Santa Cruz, it was admitted in accordance with law under date of July 1st of said year, and the petition of denouncement, decree of commission and act of obedience are of the following tenor:

To the treasurer general:

Don Rafael Elias presents himself to Your Excellency in due form and states: That, being in need of land for live stock, he denounces the public land adjoining the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of tres alamos (three cottonwoods), and obligates himself to pay the nation the fees to which it is entitled and such others as may be just, until he acquires the title of grant and confirmation, for which purpose Your Excellency will be pleased to consider said land registered and denounced according to law.

Therefore I pray Your Excellency to be pleased to give orders for the decree I solicit, in which I will receive favor. In the absence and at the request of Don Rafael Elias.

JOAQUIN ELIAS.

Decree.—Cosalá, July 1st, 1827.—The police justice of Santa Cruz will proceed, under authority conferred on him for the purpose, without prejudice to third parties who represent a better right, and after citation of the coterminous proprietors, to the survey, appraisement and publication for thirty consecutive days, of the lands mentioned in the foregoing denouncement, subjecting himself fully to the sovereign decree of the honorable constituent Congress, No. 30, of May 20th, 1825, and to the regulations that accompany it and, 437½ when these proceedings are completed, he shall forward them to this treasury, after summoning the bidders that result to appear in person or by agent at the final sale, which will take place in this office after the three customary offers.

The treasurer general of the State, Nicolas Maria Gaxiola, thus decreed and signed.

GAXIOLA.

Act of obedience.—At the presidio of Santa Cruz, on the twentieth day of the month of August, eighteen hundred and twenty-seven. Comply with what is ordered in the decree of the treasurer general of the State, Don Nicolas Maria Gaxiola, and to that end, upon citation of the parties in interest or of their agents for the purpose, and coterminous proprietors, if any, and accompanied by the other necessary assistants appointed for the purpose, proceed to the ranch of San Pedro to make the survey of the lands denounced, that is, of those that belong and correspond to citizen Rafael Elias, which survey shall be made separately from those to be made for the other denouncers, who made the denouncement together, and appear in the copy of the petition with which these proceedings begin.

Citizen Pablo Fraijo, constitutional police justice of the presidio of Santa Cruz, by the present decree thus decided, ordered and signed, in the presence of his attendant witnesses, in the absence of a notary public, according to law.

PABLO FRAIJO.

Witness:

SATURNINO SIMON.

Witness:

JOSE MARIA SOTELO.

The justice proceeded immediately to the appointment of assistants, tallymen, recorder and chainmen, who were citizens Manuel Nevia, Francisco Sandoval, Jose Samaniego, Manuel Soto and Camilo Arvizu, who offered and promised under oath to comply faithfully and lawfully with their respective offices, and upon citation of the party in interest and the coterminous proprietors, the justice made the survey set out in the following proceedings:

Proceedings of survey.—At the place called San Rafael del Valle, on the twenty-first day of the month of August, eighteen hundred and twenty-seven, I, the said judge and surveyor, in order to begin the survey of the lands denounced by citizen Rafael Elias, delivered a well-twisted and well-stretched cord to the appointed assistants and

a Castilian vara, with which there were measured and counted fifty varas of said cord and when this operation was completed, its extremities were tied to a pole and, in the presence of the party in interest, the survey was commenced from the point fixed upon for center, at a place where there are several small hills (cerritos), and taking a course south, there were measured and counted two hundred cords which terminated at the survey of the ranch of San Pedro, land purchased by Don Jesus Perez, and in his name the superintendent of said ranch was present with documents showing that up to that point belonged to his survey, and the monument there located remained as the boundary of both parties in interest, and having returned to the center a course was taken to the
438 north, measuring and counting two hundred cords, which terminated in said valley, where there is a small limestone lookout hill (devisaderito), where I ordered a pile of stone put to mark the place for the monument, and having returned to the center, they went measuring and counting on an east course, up to fifty cords, which terminated in the valley and in front of Mule mountains, where a pile of stones was put to mark the place for the monument, from which point I went back to the center, whence the survey was continued on the west side, there being measured and counted up to fifty cords which terminated in said valley, which is in front of the Guachuca range of mountains where a pile of stone was put to mark the place for the monument, with which and with one hundred cords, which were measured at each extremity of the measurements from south to north, at right angles thereto with the corresponding monuments at the extremities thereof, this survey was terminated, resulting therefrom four sitios for breeding cattle and horses in favor of said citizen Rafael Elias, with which he was satisfied and accepted the land purchased with the understanding that he must at the first opportunity mark all his boundaries with monuments of lime and stone, as is provided. And in witness thereof I enter it in the proceedings which the said Elias signed with me, the other appointed assistants not doing so because they do not know how to write, together with my attendant witnesses, in the absence of a notary public, according to law.

PABLO FRAJO,
RAFAEL ELIAS.

Witness:

SATURNINO SIMON.

Witness:

JOSE MARIA SOTELO.

Thereupon the justice proceeded to the corresponding appraisal of the land by means of intelligent experts, who were citizens Manuel Soto and Camilo Arvizu, who performed said office after the customary oath and, according to their practical knowledge and in conformity with the superior provisions on the matter, they fixed the price of the sitios at two hundred and forty dollars, at the rate of sixty dollars each because they have running water. With this appraisement the justice published them in solicitation of bidders

for thirty consecutive days, from August 30th, 1827, till September 28th of the same year, and after summoning the party in interest, transmitted them for final sale to the general treasury which, in the decree of February 7th, 1828, forwarded them for the action of the attorney general of the treasury, whose petition is literally as follows :

Fiscal Petition.

To the treasurer general :

This is an expediente that relates to the survey of four sitios for breeding cattle and horses, made by the justice of the presidio of Santa Cruz for citizen Rafael Elias, which land is known as San Rafael. Its appraised value is two hundred and forty dollars, as computed by the individuals who performed that office, and it was sold for said sum to the party in interest. The observations of the attorney general on the expediente might be understood with respect to the defects in the proceedings, but as they present no greater difficulties, I omit them and only express astonishment that
 439 the compass was not used to make the survey, inasmuch as that instrument is indispensable for running courses : so that to measure the land again because of the lack of this requisite is to enter into difficulties and to seriously prejudice the party, for which reason the attorney general of the treasury is of the opinion that, as there is no contradiction between the parties, that shows prejudice to third parties, this defect should be overlooked and the corresponding adjudication proceeded with with the customary formalities and requirements. This is my way of thinking.

Concepcion de Alamos, February 9th, 1828.

MANUEL DE BRENA.

And the general treasury having agreed to the foregoing petition of the attorney general, proceeded, by decree of April 16th, to the three public offers on said 16th, the 17th and 18th in solicitation of bidders and, none having appeared, the four sitios of land for breeding cattle and horses, at the place of San Rafael del Valle, were sold to citizen Rafael Elias, as appears from the third offer which is as follows :

Third offer and sale.—In said city on the eighteenth day of the month of April, eighteen hundred and twenty-eight, assembled as a board of sales, the president and the voting members who compose it proceeded to make the last offer for the final sale of the four sitios of land referred to in this expediente in the same terms as the first offer herein, with the sole addition that at this moment the final sale is to be made. And the hour for midday prayer of this day having already struck, and no bidder having appeared, the public crier for the last time said : " Once, twice, three times ; sold, sold, sold ; may it do much good, good, good to Don Rafael Elias."

In these terms this act was concluded, the four sitios of land for breeding cattle and horses being publicly and solemnly sold to this party in interest for the sum of two hundred and forty dollars, at which they were appraised, and in due witness thereof it is set forth

in the proceedings which the president and voting members of the board signed, as also did the agent who was Don Tiburcio Gomez.

GAXIOLA.

GOMEZ.

URRIETA.

TIBURCIO GOMEZ.

Receipts for grants of lands.—Two hundred and forty dollars, paid by Don Tiburcio Gomez, in the name of Don Rafael Elias, resident of Arizpe, for the grant of four sitios of land for cattle and horses, at the place called San Rafael del Valle, in the jurisdiction of the presidio of Santa Cruz, each sitio having been appraised at the rate of sixty dollars, because they have running water, and which were sold to said Elias, in the session of the board of sales held in this capital on the 18th instant..... \$240.00

And in witness thereof I give the present certificate in Alamos, on the twenty-first of April, eighteen hundred and twenty-eight.

NICOLAS MARIA GAXIOLA.

440 The present original certificate having been aggregated to the expediente, it was concluded with all the requisites and formalities the laws provide and remains in the custody of this general treasury as a perpetual evidence.

Therefore, using the powers the laws concede to me, by these presents and in the name of the sovereign State of Sonora, I confer a formal grant of the right to four sitios of land for breeding cattle and horses, which includes the tract known as San Rafael del Valle, situated in the jurisdiction of the presidio of Santa Cruz, to citizen Rafael Elias, of the vicinage of this capital, to whom I cede, give and adjudicate said land by way of sale and with all the qualities, firmness and subsistence the laws establish, for himself, his children, heirs and successors, with all their entrances, exits, uses, customs, servitudes and others that belong to it, with the precise qualification and exact condition that they are to keep said sitios populated and legally protected, without their being depopulated, deserted or legally unprotected for any time, with the understanding that if their total abandonment for the space of three consecutive years should occur and there should be any person who denounces them, then, after proof of the fact, they shall be declared public lands and shall be adjudicated again to the highest bidder, excepting as is just those cases where the lack of protection is caused by the notorious invasion of enemies and only for the time of such occurrences, cautioning the said citizen Rafael Elias, as he is strictly cautioned, and his heirs and successors, that they are to limit and confine themselves to the land, provisions, metes and bounds separately indicated in the foregoing proceedings of survey, observing and complying exactly with article 30 of law No. 30 of May 20th, 1825, which imposes upon them the obligation to maintain in their boundaries monuments of lime and stone, under a penalty of twenty-five dollars, which shall be exacted of them if they violate it, for the common funds, said

monuments being constructed by the judge at the expense of the parties in interest.

And I order and command the judges, justices and local authorities, who now are and shall hereafter be in the district of this capital, for the good and prompt administration of justice, and in compliance with the laws on the matter, not to permit the said party in interest or his successors to be in any manner disturbed, annoyed or molested in the free use, exercise, property, dominion and possession of the said four sitios of land at the place of San Rafael del Valle, but rather they shall constantly watch and see, with the greatest vigilance and activity, that they are always protected and maintained in the quiet and peaceable possession to which they are entitled by legal right, so that they can, in this manner, freely sell, exchange, barter, donate, transfer, cede and alienate said four sitios at their own free will and discretion as absolute owners. In which terms I issue the present formal title of grant to citizen Rafael Elias, his heirs and successors, and deliver it to him for his security, after entry (*toma de razon*) in the proper book.

Given in Arizpe, the capital, on the twenty-fifth day of the month of December, eighteen hundred and thirty-two, authenticated and signed by me, sealed with the seal of this general treasury, in the presence of my undersigned attendant witnesses, with whom I act in the absence of a notary, there being none, in accordance with law.

JOSE MARIA MENDOZA.

441

Witness:

LUIS CARRANCO.

Witness:

RAFAEL MIRANDA.

Entry of the present title is made in the proper book in this general treasury, at folio 11.

[A RUBRIC.]

442

DEFENDANTS' EXHIBIT D 1b.

Copy of the expediente and proceedings had in the survey of eight sitios for raising large stock and horses in the places called "San Ignacio del Babocomari," in behalf of citizen Ignacio Elias and Doña Eulalia Elias.

443 A fifty-cent stamp duly canceled.

Citizen treasurer general:

I, Ignacio Bonillas, a resident of Nogales, and by chance in this capital, appear before you and state: That, as appears from the letter the original of which I forward herewith, Mr. Robert Perrin, owner of the land known as "San Ignacio del Babocomari," situate in the Territory of Arizona, United States of the North, needs a certified copy of the expediente relating to said land, which exists in the archives of the treasury under your worthy charge and, said

Mr. Perrin having authorized me to solicit said copy in his name, I pray you to be pleased to direct that the corresponding exemplification be issued to me for the uses that may be convenient to the party in interest.

Hermosillo, February 5, 1898.

IGNACIO BONILLAS.

Received on the seventh instant, and, as requested, let the copy asked for be issued.

V. AGUILAR. [RUBRIC.]

Stamp 3rd. 2 reals. Years of 1822 and 1823. Habilitated, the constitution having been sworn to by the King on March 9, 1820. Habilitated by the State of the Occident for the years 1827 and '28. A stamp which reads: "Habilitated by the Republic of Mexico for the years 1824 and '25."

Mr. treasurer general:

444 Don Ignacio Elias and Doña Eulalia Elias present themselves before you in due form and state: That, being in need of land for live stock (bienes de campo) they, in company with Don Rafael Elias, Captain Ignacio Elias and Don Nepomuceno Felix denounce the vacant land which confines with the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay the nation the corresponding dues together with whatever else that may be just, until we acquire title to the grant and confirmation, for which purpose you will be pleased to consider said vacant land as registered and denounced wherefore we pray you to be pleased to provide as we request, by which we shall receive favor.

Arizpe, March 12, 1827.

By consent and request of Don Ignacio Elias:

JOAQUIN ELIAS. [RUBRIC.]

EULALIA ELIAS. [RUBRIC.]

COSALA, July 1, 1898.

The police magistrate of Santa Cruz, with authority which is conferred on him therefor, without prejudice to a third party who may represent a better right and after citation of the coterminous owners will proceed to the survey, appraisement and publications for thirty consecutive days of the lands the foregoing denouncement designates, subjecting himself fully to the sovereign decree of the honorable constituent Congress of the State, No. 30, of May 20, 1825, and to the regulations that accompany it, and, after said proceedings are executed, he will forward them to this office of the treasurer,

445 citing the bidders that may result to be present, in person or by attorneys, at the final sale that is to be held in said office, after the three customary public offers. The treasurer general of the State, Nicolas Maria Gaxiola, so decreed and signed it.

GAXIOLA. [RUBRIC.]

At the presidio of Santa Cruz and on the fifth day of the month of October, one thousand eight hundred and twenty-eight, in view of the foregoing decree of the treasurer general, comply with what is ordered in said decree dated July 1, 1827; and to that end, after citation of the parties in interest, coterminous owners, expert surveyor and other necessary assistants who shall be appointed, let me go to the hacienda of San Pedro to the end that the survey of the sitios the parties in interest desire may be proceeded with.

Citizen Alejandro Franco, the constitutional magistrate (alcalde) of the presidio of Santa Cruz, by this order, so determined and signed it, with attending witnesses with whom he acts *ex officio*, in default of a notary, according to law.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA.

446 At the hacienda of San Pedro and on the eighteenth day of the month of October, one thousand eight hundred and twenty-eight, I, the said judge, citizen Ignacio Elias being present for himself and as the attorney of his sister, Doña Eulalia; the coterminous owners, Captain Ignacio Elias and Nepomuceno Felix; the expert surveyor, lieutenant colonel of engineers, citizen Jose Maria Caballero, to whom I gave notice of and made known the foregoing order, which they understood, and, accepting citation and the appointments, the twentieth day of said month was designated for going to make the survey, which they signed with me and those in my attendance, in the ordinary form.

For Alejandro Franco:

RAMON ROMERO.

IGNACIO ELIAS.

JUAN NEPOMUCENO FELIX.

JOSE DE CABALLERO.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

Having arrived at the place called San Ignacio de Babocomari, the twentieth day of said month and year, as the place at which terminate the measurements of citizens Ignacio Elias Gonzalez and Nepomuceno Felix, in the direction east-northwest to west-southwest,

accompanied by the party in interest, the expert surveyor, 447 the assistants who are to be appointed and attending witnesses,

I ordered that, before commencing the survey, an inspection, or ocular examination, be made of the lands that are going to be surveyed on petition of citizen Ignacio Elias and his principal, Doña Eulalia, and, after being well examined, I found them to be ample places for raising large and small stock, the greater part of

them with water flowing from permanent springs, with the sole disadvantage of being very dangerous with hiding places of the hostile Apache. And in witness thereof I enter it as a minute which I signed with those in my attendance with whom I act.

For Alejandro Franco:

RAMON ROMERO.

IGNACIO ELIAS.

JUAN NEPOMUCENO FELIX.

IGNACIO ELIAS GONZALEZ.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

On said day, month and year, I, the judge commissioned, for the purpose of proceeding to the survey of the land denounced, on a bald hillock (loma pelona), in front of the small marsh (cieneguita) of San Ignacio de Babocomari, appointed citizen Lorenzo Sortillon as tallyman; citizens Andres Mendoza and Pablo Elias as chainmen, and citizens Antonio Campoy and Mauricio Neiro as recorders, and together with the expert surveyor, citizen Lieutenant Colonel
448 Jose Maria Caballero, they accepted said duties, each one for himself and in the proper form taking the customary oath to faithfully and lawfully discharge the duties that correspond to each one, without deception or fraud, and to work each one according to his best intelligence and understanding, and those who knew how signed it with me and those in my attendance in the ordinary form, to which I certify.

For Alejandro Franco:

RAMON ROMERO.

LORENZO SORTILLON.

PABLO ELIAS.

[RUBRIC.]

[RUBRIC.]

[RUBRIC.]

For Andres Montoya, X, for Antonio Campoy and Mauricio Neiro:

FRANCISCO GAUNA.

[RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

At said place and said day, month and year, in order to proceed to the survey, the parties in interest, the assistants appointed and attending witnesses being present, I ordered that a cord of fifty varas be measured and, its extremities being tied to two poles, said survey was proceeded with by the expert surveyor, citizen Jose M. Caballero, who, setting up the compass, took the direction (viento, wind) east
east
northwest quarter east to west-southwest quarter west,

S. 67° 30' W. magnetic Bonillas

S. 78° 45' W. " Flipper

449 where I had a cross monument placed, and from said place, through said point, there were measured and counted one hundred cords which terminated in a small valley in the vicinity of some bald hillocks (lomas pelonas) where I had a monument placed, and, as it was now late, I had the cord gathered up and the assistants and others to retire to rest until the following day to continue the survey, which I enter as a minute and I sign it with those in my attendance and other parties in interest who were accompanying me, to which I certify.

For Alejandro Franco :

RAMON ROMERO.

[RUBRIC.]

IGNACIO ELIAS.

[RUBRIC.]

JUAN NEPOMUCENO FELIX.

[RUBRIC.]

IGNACIO ELIAS GONZALEZ.

[RUBRIC.]

LORENZO SORTILLON.

[RUBRIC.]

JOSE DE CABALLERO.

[RUBRIC.]

For Antonio Campoy and Mauricio Neiro :

FRANCISCO GAUNA.

[RUBRIC.]

For Andres Montoya and for myself :

PABLO ELIAS.

[RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

At the place where I ordered the second monument put, called the valley of San Ignacio de Babocomari, and accompanied by the party in interest, expert surveyor, assistants appointed, to
450 continue the survey in the same direction, and on the twenty-first day of said month and year, I had the cord of fifty usual varas again examined and, after it was examined, its extremities were tied to two poles and the cord being extended there were measured and counted, in said direction, two hundred and forty-three cords which terminated on top of a hillock (loma) which looks in the direction (viento, wind) south-southwest, where the survey was suspended on account of the roughness of the ground, the many and deep ravines that appeared in the direction of this measurement, wherefore it was necessary for me and the expert surveyor to make an estimate of fifty-seven cords more for the completion of the side of three sitios for large stock, this estimate terminating at the hot spring in front of the Santa Rita mountains at the foot of a bald hillock (loma pelona) where I ordered placed a corner monument which looks toward the foot of said mountain and said hot spring, and from said point because the roughness of the ground and the deep ravines continue, in order to form the end line of these sitios perpendicular to the measurement already described in said direction, I myself and the expert surveyor estimated in the direction (viento, wind) northwest quarter north-northwest to southeast

quarter south-southwest sixty cords to the foot of a small cottonwood tree which stands in a small valley at the foot of said Santa Rita mountains, and for the completion of the end or perpendicular line

in the opposite direction (viento, wind) south-southwest quarter southeast to north-northwest quarter northwest the other 451 forty cords were estimated and ended on a hillock (loma) where there were several oaks, where I ordered that the corresponding monuments be put, with which, together with the three other sitios for large stock and the one measured the day before, four sitios were completed; and as it was more than midday, I ordered that we withdraw to the monument at the center, and in fact having arrived at said monument in front of the marsh of San Ignacio del Babocomari, having again examined the cord of fifty varas and tied its extremities to said two poles, the cord being stretched in the

direction west-southeast to east-northwest there were measured and counted seventy-four cords, which terminated on top of some hillocks (lomas) in the vicinity of the end of the water, where, as it was now night, the measurement was concluded for this day, all of us retiring to rest, which I enter as a minute signing it with the party in interest, the expert surveyor, assistants appointed and attending witnesses to which I certify.

For Alejandro Franco:

RAMON ROMERO.

IGNACIO ELIAS.

JUAN NEPOMUCENO FELIX.

LORENZO SORTILLON.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

For Andres Montoya and for myself:

PABLO ELIAS.

[RUBRIC.]

For Antonio Campoy and Mauricio Neiro:

FRANCISCO GAUNA.

IGNACIO ELIAS GONZALEZ.

451½

JOSE DE CABALLERO.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

At said place and on the twenty-second day of said month and year, I, said commissioned judge, the party in interest, expert surveyor, and other appointed assistants, having had the cord of fifty varas and the direction of the preceding day examined, the cord being extended in this same direction, there were measured and counted twenty-six cords for the completion of one hundred cords for the side of one sitio for large stock, and in the same direction, the cord passing over the tops of various hillocks (lomas) and ravines, there were measured and counted three hundred cords, the last ones passing

through a valley in the vicinity of the pools of the spring and terminating above said pools on a rocky hillock (loma), where I ordered a corner monument placed, with which was completed the side of the other four sitios for large stock, where, the compass being set up by the expert surveyor, the cord placed perpendicular and forming with the preceding course a right angle or angle of ninety degrees, the cord being examined and stretched in the direction south-south-

east
west quarter southeast to north-northwest quarter northwest, there were measured and counted forty cords corresponding to those of the preceding end line of the other four sitios, terminating on top of some bald hillocks (lomas pelonas) where I ordered a corner
452 monument placed, and returning to the center of the measurement of this end line, in the opposite direction, north-
east

northwest quarter northwest to south-southwest quarter southeast there were measured and counted sixty cords for the completion of the hundred cords terminating on top of a very high hill (cerro) with which the measurement was concluded making the total of eight sitios for large stock registered by citizen Ignacio Elias and his sister, Doña Eulalia, and, being satisfied with the aforesaid measurements, he accepted them, being cautioned that he shall, at the proper time, mark his boundaries with monuments of lime and stone, as is provided, and in witness thereof he signed it with me and all those who know how with those in my attendance with whom I act *ex officio* in default of a notary, according to law.

For Alejandro Franco:

RAMON ROMERO.

[RUBRIC.]

IGNACIO ELIAS.

[RUBRIC.]

LORENZO SORTILLON.

[RUBRIC.]

For Andres Montoya and for myself:

PABLO ELIAS.

[RUBRIC.]

JUAN NEPOMUCENO FELIX.

[RUBRIC.]

For Antonio Campoy and Mauricio Neiro:

FRANCISCO GAUNA.

[RUBRIC.]

IGNACIO ELIAS GONZALEZ.

[RUBRIC.]

JOSE DE CABALLERO.

[RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

453 At the hacienda of San Pedro and on the twenty-fourth day of the month of October, one thousand, eight hundred and twenty-eight, I, the judge commissioned, in order to proceed to the appraisement and valuation of the lands surveyed in behalf of said citizen Ignacio Elias and his sister, Doña Eulalia, comprising, between both of them, eight sitios for large stock, saw fit to appoint, as such appraisers, because I was aware that they had the necessary information, citizens Pablo Elias and Ramon Romero, residents of the

presidio of Santa Cruz, who were present at the survey and, said appointment being made known to them, they accepted it and took the oath, in the form corresponding to each one, promising to make the valuation without any deception, fraud or collusion, and, in virtue thereof, they said, in common accord and conformably to the examination they had made and being conversant with the orders that govern in the matter, that there should be given them and they give them the value of sixty dollars to each one of six sitios for large stock, as they have permanent water, and to the remaining two the value of ten dollars each, because they are absolutely without water, with which the total of eight sitios for large stock reaches the value of three hundred and eighty dollars, and, having read this statement to the appraisers, they ratified it and signed with me and those in my attendance with whom I act *ex officio* according to law.

For Alejandro Franco :

454

RAMON ROMERO. [RUBRIC.]
PABLO ELIAS. [RUBRIC.]
RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

At the presidio of Santa Cruz, on the twenty-ninth day of said month and year, I, the judge commissioned, having returned to this presidio, and in view of the foregoing proceedings and appraisement of the lands set apart to citizen Ignacio Elias and his sister, Doña Eulalia, composed of eight sitios for raising large and small stock, I ordered that they be published for thirty consecutive days counted from tomorrow as is provided by the law. The judge commissioned so provided and signed it with attending witnesses to which I certify.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

1st publication. At said place and on the thirtieth day of the month of October of said year, I, the said judge of said presidio, caused various individuals to be assembled, at the sound of the drum, in the public square of said presidio, and the public crier, Gregorio Gallegos, to proclaim, in the presence of all of them, in a loud and clear voice :

455 " The lands at the place called San Ignacio del Babocomari situate in this jurisdiction and comprising eight sitios for raising large and small stock, in behalf of citizen Ignacio Elias and his sister, Doña Eulalia, appraised in the sum of three hundred and eighty dollars, are being sold on account of the nation ; whoever desires to make a bid shall have the bid he makes admitted by apply-

ing to me." And no bidder having resulted, it was entered as a minute which I signed with those in my attendance according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

2d publication. At said presidio, on the thirty-first day of said month and year, another publication was made equal in all respects to the foregoing, and no bidder having appeared, I entered it as a minute which I sign with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

3d publication. At said presidio, on the first of November, one thousand eight hundred and twenty-eight, another publication was made, and no bidders having appeared it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

4th publication. At said presidio, on the second day of said month and year, another publication was made, and no bidder appearing this minute was entered which I signed with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

5th publication. At said presidio, on the third day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

6th publication. At said presidio, on the fourth day of said month and year, another publication was made and no bidder having appeared I entered this minute which I signed with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

7th publication. At said presidio, on the fifth day of said month and year, another publication was made and there being no bidder it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

8th publication. At said presidio, on the sixth day of said month and year, another publication was made and no bidder having appeared, it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

9th publication. At said presidio, on the seventh day of said month and year, another publication was made and no bidder having appeared it was entered as a minute which I signed with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

10th publication. At said presidio, on the eighth day of the current month and year, another publication was made and no bidder

having resulted it was entered as a minute which I signed with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

11th publication. At said presidio, on the ninth day of said month and year, another publication was made and no bidder having appeared it was entered as a minute which I signed with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

459 12th publication. At said presidio, on the tenth day of said month and year, another publication was made and no bidders having resulted it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

13th publication. At said presidio, on the eleventh day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

14th publication. At said presidio, on the twelfth day of said month and year, another publication was made and no bidder having appeared it was entered as a minute which I signed with those in attendance.

For Alejandro Franco .

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO. [RUBRIC.]

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

460 15th publication. At said presidio, on the thirteenth day of said month and year, another publication was made and there being no bidder it was entered as a minute which I signed with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO. [RUBRIC.]

Attendance:

FRANCISCO GAUNA. [RUBRIC.]

16th publication. At said presidio, on the fourteenth day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

17th publication. At said presidio, on the fifteenth day of said month and year, another publication was made and no bidder having appeared it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

461 18th publication. At said presidio, on the sixteenth day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

19th publication. At said presidio, on the seventeenth day of said month and year, another publication was made and no bidder re-

sulting it was entered as a minute which I signed with those in attendance.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRICS.]

20th publication. At said presidio, on the eighteenth day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in attendance.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRICS.]

462 21st publication. At said presidio, on the nineteenth day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRICS.]

22d publication. At said presidio, on the twentieth day of said month and year, another publication was made and there being no bidder it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRICS.]

23rd publication. At said presidio, on the twenty-first day of said month and year, another publication was made and there being no bidder it was entered as a minute which I signed with those in attendance.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRIC.]

463 24th publication. At said presidio, on the twenty-second day of said month and year, another publication was made and no bidder having resulted it was entered as a minute which I signed with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

25th publication. At said presidio, on the twenty-third day of said month and year, another publication was made and no bidder appearing it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

26th publication. At said presidio, on the twenty-fourth day of said month and year, another publication was made and no bidder resulting it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

464 27th publication. At said presidio, on the twenty-fifth day of said month and year, another publication was made and no bidder having appeared it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

28th publication. At said presidio, on the twenty-sixth day of said month and year, another publication was made and there being no

bidder it was entered as a minute which I signed with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

29th publication. At said presidio, on the twenty-seventh day of said month and year, another publication was made and no bidder resulting it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

465 30th publication. At said presidio, on the twenty-eighth day of said month and year, the last publication was made and no bidder having resulted it was entered as a minute which I signed with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

At said presidio, on said day, month and year, this expediente being concluded, forward it to the treasurer general, with citation to the party in interest to proceed, in person or by attorney, to the capital at Alamos to be present at the three public offers of sale of the lands advertised which are to be held at said capital. I, the judge commissioned, so ordered, decreed and signed it with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [RUBRIC.]

Attendance:

RAMON ROMERO.

Attendance:

FRANCISCO GAUNA. [RUBRICS.]

Thereupon, on said day, month and year, citizen Ignacio Elias being present for himself and as attorney for his sister, Doña Eulalia, I gave notice of and made known to him the foregoing decree and,

accepting citation, he signed it with me and those in my attendance with whom I act *ex officio*, according to law.

For Alejandro Franco :

RAMON ROMERO. [RUBRIC.]
IGNACIO ELIAS. [RUBRIC.]

Attendance :

RAMON ROMERO.

Attendance :

FRANCISCO GAUNA. [RUBRICS.]

NOTE.—This expediente was forwarded, with an official communication dated November 30, 1828, to the treasurer general of the State, and in witness thereof I attached my rubric to it.

FRANCO. [RUBRIC.]

ALAMOS, *December 19, 1828.*

Refer it to the fiscal attorney of the treasury of the State that he may give his opinion.

GAXIOLA. [RUBRIC.]

Citizen treasurer general :

This expediente contains the survey of eight sitios of land for raising large stock and horses made by the magistrate (alcalde) of Santa Cruz at the places of San Ignacio del Babocomari. I find no reason why they should not be adjudicated to the applicants unless they exceed the number that can be granted under article 21 of the decree of May 20, 1825, but if you are satisfied as to the requirements prescribed in article 22, I am of opinion that they may be sold to the applicants, unless a higher bidder appears.

467 Alamos, December 20, 1828.

FELIPE GIL. [RUBRIC.]

ALAMOS, *December 22, 1828.*

Concurring in the opinion of the fiscal attorney, which precedes, it was my duty to order and I do order that the members of the board of sales be summoned for the purpose of holding the last three offers of sale and final sale of the land described in this expediente.

GAXIOLA. [RUBRIC.]

1st offer of sale.—In the city of Concepcion of Alamos, on the twenty-second day of the month of December, one thousand eight hundred and twenty-eight, the president and members that compose it being assembled as a board of sales for the purpose of making the first offer of the lands to which this expediente refers, they directed that some of the citizens be called together in the office of this treasury, at the sound of the drum, and that, in their presence, Marcelo Parra, who acted as public crier, proceed to make a publication, as in fact he did, saying in a loud and clear voice :

"There are going to be sold the lands at the place called San Ignacio del Babocomari situated in the jurisdiction of the presidio

of Santa Cruz comprising eight sitios for raising large stock
 468 and horses and small stock, surveyed for Don Ignacio and
 Doña Eulalia Elias and appraised at three hundred and
 eighty dollars: whosoever wishes to make a higher bid, let him
 apply to this board where the bid he makes will be admitted. And
 no person having applied it is entered as a minute in witness thereof."

GAXIOLA.	[RUBRIC.]
ALMADA.	[RUBRIC.]
GIL.	[RUBRIC.]

2d offer of sale.—In said city on the twenty-third day of the
 month of December, one thousand eight hundred and twenty-eight,
 the president and members composing the board having assembled,
 for the purpose of making the second offer of the lands described in
 this expediente, they ordered that it be made in the same terms as the
 first preceding, which was done, he who acted as public crier adding
 only that the final sale must be made tomorrow. And no bidder
 having resulted it is entered as a minute in witness thereof which
 the members of the board signed.

GAXIOLA.	[RUBRIC.]
ALMADA.	[RUBRIC.]
GIL.	[RUBRIC.]

3rd offer of sale.—In said city of Concepcion, on the twenty-fourth
 day of said month and year, the president and members of said
 board of sales being assembled, they directed that the third
 469 offer and final sale of the lands described in this expediente
 be made, which was done in the same manner as the two
 preceding, the public crier merely adding that at this moment the
 final sale has to be made. And the hour for midday prayer for
 this day having sounded and no bidder having appeared, the public
 crier said, for the last time in a loud voice:

"Once, twice, three times: sold, sold, sold: may it do good, good,
 good to Don Ignacio and Doña Eulalia Elias."

In these terms this act was concluded, the eight sitios of land for rais-
 ing large stock and horses at the place called San Ignacio del Babo-
 comari, jurisdiction of the presidio of Santa Cruz, being publicly and
 solemnly sold to said parties in interest, for the sum of three hun-
 dred and eighty dollars at which they were appraised. And in due
 witness thereof this minute is entered which the president and mem-
 bers of the board signed with Captain Ignacio Elias as attorney for
 the parties in interest.

GAXIOLA.	[RUBRIC.]
ALMADA.	[RUBRIC.]
GIL.	[RUBRIC.]
IGNACIO ELIAS GONZALEZ.	[RUBRIC.]

ARIZPE, *October 19, 1832.*

Payment of three hundred and eighty dollars, for which were sold
 the eight sitios of land comprised in the place called San Ignacio del

470 Babocomari to citizen Ignacio Elias and Doña Eulalia Elias, the first a resident of the town of Rayon and the second of this capital, having been paid into this treasury general, as shown by the certificate aggregated to the expediente, let formal title to the grant be issued for their security. The treasurer general of the State of Sonora so ordered and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Attending witness:

MARIANO ROMO. [RUBRIC.]

Attending witness:

LUIS CARRANCO. [RUBRIC.]

On December 28, 1832, title was issued for the grant of land at Babocomari, to which this expediente refers.

I, Nicolas Maria Gaxiola, treasurer general of the revenues of the State of the Occident, certify:

That, on the reverse side of leaf 3 of the manual of this treasury, for the current year, there is entered under this date the following entry:

Receipt for grants of lands, three hundred and eighty dollars which Captain Ignacio Elias paid, in the name of Don Ignacio and Doña Eulalia Elias residents of Arizpe, for the grant of eight sitios of land for raising large stock and horses at the place called San Ignacio del Babocomari, jurisdiction of the presidio of Santa Cruz, appraised at said sum, which were sold in their favor, without any adverse claimant, by the board of sales held in this treasury on the 24th of December last passed, \$380.00.

471

GAXIOLA.

IGNACIO ELIAS GONZALEZ. [RUBRIC.]

And in witness thereof I give the present certificate in Alamos on the eighth of January, one thousand eight hundred and twenty-nine.

NICOLAS MARIA GAXIOLA. [RUBRIC.]

Crossed out—C—not valid. Interlineations—said—Lorenzo Sortillon—Juan Nepomuceno Felix—valid.

This is an exact copy of its original which I authenticate and sign in Hermosillo on the eighth of February, one thousand eight hundred and ninety-eight.

V. AGUILAR. [RUBRIC.]

Translated by Henry O. Flipper.

DEFENDANTS' EXHIBIT D 1c.

Year of 1821.

Proceedings which Comprise the Place Called San Pedro, Situated in the Jurisdiction of the Presidio of Fronteras. N. 640.

473 Mr. Governor Intendent :

I, Don Jose de Jesus Perez, a resident of this capital, before Your Excellency, in conformity with law and in accordance with the royal ordinance of Campo, laws, sanctions and rescripts that treat of the royal and abbatial lands with which His Majesty (God preserve him) protects his vassals, as perquisites of his royal patrimony, appear and state: That, whereas I enjoy some property, acquired in the military service and by my own industry, without owning a place upon which to locate and bring them together (centruarlos), I apply to the superior authority of Your Excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro river, situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias, be considered as registered, in virtue of which I protest that I will enter into composition with His Majesty (God preserve him) and will pay the quota or cost of its purchase, the royal half annate tax and whatever else may be necessary, for such is rigorous justice with relation to what is stated. In this understanding I pray you to issue commission for the execution of the necessary proceedings, ocular examination, reconnoissance of the ground, survey, appraisement, publications, possession and final sale of the four sitios, which will be surveyed for me in a square or oblong figure according to the length or extent of the land and its direction, and in these terms I pray Your Excellency to defer to my just petition by which I shall receive grace. I protest costs and whatever is necessary, etc.

JOSE DE JESUS PEREZ. [RUBRIC.]

Alamos, March 12, 1821.—Being presented and admitted without prejudice to a third party, Don Nazario Gomez will proceed to the survey, appraisement and other customary proceedings, citing the adjoining owners, and when concluded he will report to me for such other proceedings as may be proper.

CORDERO. [RUBRIC.]

Fronteras, April 28, 1821.—Having received from the attorney Don Rafael Salas, the foregoing superior decree of commission, let the communication requesting permission and the necessary assistance, which the constitutional alcalde of this district must furnish, be forwarded by me in order to proceed to the survey. I, Don

Nazario Gomez, judge commissioned, thus decreed, ordered and signed it, before my attending witnesses, according to law. I attest.
 NAZARIO GOMEZ. [RUBRIC.]

Witness:

LUCIO GOMEZ. [RUBRIC.]

Witness:

FULGENCIO TELLES. [RUBRIC.]

Under date of the 29th instant the communication ordered in the foregoing minute was forwarded and in witness thereof I entered this minute which I rubricked.

[RUBRIC OF NAZARIO GOMEZ.]

474 On the 30th of the current month and year the constitutional alcalde, Don Miguel Teran, replied in a communication refusing the assistance sought by this court, in virtue of which and in view of his asking for the transmittal of the proceedings to his possession, in the following terms (among other things) he says: I expect of you that you will forward them to me in order to give due compliance to the superior decrees, for I cannot give permission for them to be surveyed by other than myself, being under obligation to give reasons for it whenever I am asked by my superior for the motives I had therefor, which I reserve until then, with which I reply to your four communications. With this understanding, upon his responsibility, I forwarded the present proceedings to him taking his receipt for the security of this court, and by these presents I so decreed and signed it according to law. I attest.

NAZARIO GOMEZ. [RUBRIC.]

Witness:

LUCIO GOMEZ. [RUBRIC.]

Witness:

FULGENCIO TELLES. [RUBRIC.]

Writ of obedience.—Fronteras, May 3, 1821.—Having received the foregoing superior decree delivered to this court by Don Nazario Gomez, in virtue of which, and the person of Don Rafael Salas having appeared before me as the attorney of the party in interest, Don Jose Jesus Perez, whose power of attorney I certify I have seen, I said: Proceed to the survey, for which purpose appoint a promotor fiscal, expert measurers, appraisers, and a recorder of courses, and inasmuch as in the persons of Don Lucio Gomez, Don Ramon Benitez, Don Teodoro Aros and Don Luis Aragon, reside the qualities of fitness, being known, practice, skill and information, I have concluded to appoint, as I do appoint, the first as promotor fiscal, for the reconnoissance of the ground, ocular examination and recommendations in behalf of the public treasury; the second and third, who are Benitez and Aros, for appraisers, and the fourth, Don Luis Aragon, for recorder of courses; in this understanding notify them of their appointments that they may be sworn and commissioned upon their acceptance, and in conformity with law and with what results, proceed to whatever else is required in justice. I, Don Miguel

Teran, constitutional alcalde of this district and judge surveyor in this registry, so decreed, ordered and signed it, in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I, judge surveyor, in virtue of the foregoing order, summoned and there appeared in this court the person of Don Lucio Gomez, and I gave him notice of and made known to him his appointment as promotor fiscal of the public treasury for the survey, and when cognizant of it all, he said: he hears it and signed it with me and those in my attendance, in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, the person of Don Lucio Gomez, the promotor
475 fiscal appointed, being present, I administered the oath to him, which he took in due form of law, before God, our Lord, and a holy cross, under the obligations and penalties of which he offered to proceed faithfully and lawfully to the discharge of his commission, promising not to defraud nor consent to anything against the perquisites that belong to the public treasury, which he will execute without imposition, fraud, collusion or deception, under the oath he has taken. He said he was over twenty years of age, married, a citizen, and signs it before me and those of my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

I, the said alcalde and judge surveyor, in view of the acceptance and oath of the appointed promotor fiscal of the public treasury, Don Lucio Gomez, said: I would and do commission him to said office and would and do sanction it by my authority and judicial decree, and would and do give him therefor all the power and authority required by law, that is necessary, and can and ought to be available for him to perform, in the name of the public treasury, all the acts, commissions and proceedings which it of itself ought to do in the matter, and by these presents I so decreed, ordered and signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the same day, month and year, I, the said alcalde and judge surveyor, in the presence of the appointed promotor fiscal, summoned and there appeared before me and in this court the persons appointed, Don Ramon Benitez, Don Teodoro Aros and Don Luis Aragon, to

whom being present I gave notice of and made known the appointment of measurers, appraisers and recorder of courses, and they said, each one separately and conjointly: That they would accept and did accept said appointment and the promotor fiscal and the attending witnesses with whom I act according to law signed it before me. I attest.

MIGUEL TERAN.	[RUBRIC.]
LUCIO GOMEZ.	[RUBRIC.]
TEODORO AROS.	[RUBRIC.]
RAMON BENITEZ.	[RUBRIC.]
LUIS DE ARAGON.	[RUBRIC.]
JULIAN MONTAÑO.	[RUBRIC.]

Thereupon, in the presence of the appointed promotor fiscal, and in virtue of the acceptance made by Don Ramon Benitez, Don Teodoro Aros and Don Luis Aragon, in their own persons, whom I certify I know, and to each of them, severally and jointly, I administered the oath, which they took in due form of law, before God, our Lord, and a holy cross, under the obligation and penalties of which they promised to proceed faithfully and lawfully, according to their best understanding and intelligence, to the just appraisal of the tract, without using therein fraud or imposition, and in witness thereof and observance of the attribute the promotor
 476 fiscal and those of my attendance with whom I act in the ordinary manner, according to law, signed it before me. I attest.

MIGUEL TERAN.	[RUBRIC.]
LUCIO GOMEZ.	[RUBRIC.]
RAMON BENITEZ.	[RUBRIC.]

Witness:

LUIS DE ARAGON.	[RUBRIC.]
JULIAN -TAÑO.	[RUBRIC.]

In view of the acceptance and oath taken by the appraisers, and the recorder, set out in the foregoing proceedings, I said: I would and do commission them to the office of expert measurers, appraiser and recorder, which I would and do sanction by my authority and judicial decree, giving them, as I do give them, by these presents, all the power and authority necessary for them to examine the lands, their pastures, timber, water holes and watering places, and to appraise and to fix their just value according to their quality and circumstances with the legality and scrupulousness the matter requires, and by these presents I so decreed, ordered and signed it with those in my attendance, according to law. I attest.

MIGUEL TERAN.	[RUBRIC.]
TEODORO AROS.	[RUBRIC.]

Witness:

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the third day of the month of May I, said alcalde and judge surveyor, in these proceedings, said : That, in view of the conclusion of these proceedings of appointment of assistants necessary for the work, inasmuch as there are no adjoining owners to summon, put up public notices summoning whomever might be thought to have a right, and by these presents let it be understood for the sixth instant, at which time the justice they demand and which favors them will be heard, attended to and respected, and by these presents I so decreed, ordered and signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Thereupon, the public notice of summons provided for in the foregoing minute was put up, and in due witness thereof and that it may serve the purposes of the law, I entered this minute, to which I attach my rubric.

[RUBRIC OF MIGUEL TERAN.]

Having summoned Don Manuel Antunes and he having replied on the 17th instant, as will be seen by his communication, which I order aggregated to the proceedings that it may serve the purposes of the law, likewise await his presence for the execution of the survey. And by these presents I so decreed, ordered and signed it, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

477. Replying to your communication of the 16th instant, I will appear personally at the place to which I am summoned, at the survey of the lands which, on account of Don Jose de Jesus Perez, is being made on the San Pedro river, and I will there point out the lands which I find myself in disposition to immediately register until the final proceedings of composition with His Majesty are had, and in case said survey conflicts with the lands I shall point out and have held for the space of two years with my cattle, in that event I shall enter into opposition and contest for them as may be convenient to me. God preserve you many years.

Place of Terrenate, May 17, 1821.

MANUEL ANTUNES. [RUBRIC.]

Mr. Constitutional Alcalde, Miguel Teran.

In the field, place of San Pedro, on the 18th day of the current month and year, I, said alcalde, in the presence of the promotor fiscal, measurers, appraisers and recorder, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river without any damage resulting to him in said direction, but going up the river he would be damaged as he considered himself possessed of rights and the lands he has held included in the sitios which he expects from day to day will be adjudicated to him, to which, when stated by said Antunes and noticed by the attorney,

Don Rafael Salas, the latter took exception on account of the delay that would result to the prejudice of his party by depriving him of the benefit of the water produced by the marsh (ciénega) which is the mother of these pastures (ejidos), for which reason the survey in behalf of his principal would be useless; upon which operations Antunes and Salas contended until after being reconciled, to obviate inconveniences, expenses and damages which might result to either of the parties in interest, they yielded and agreed to divide the water of the marsh in halves for the benefit of the farms, being obligated by this same act to preserve harmony, for they so obligated themselves, Antunes for himself and Salas in the name of his principal, in testimony of which I entered it as a minute which the promotor fiscal, and other assistants signed with me before those in my attendance with whom I act in the ordinary manner, in default of a royal or public notary, there being none in the terms the law provides, to all of which I certify.

MIGUEL TERAN.	[RUBRIC.]
LUCIO GOMEZ.	[RUBRIC.]
RAFAEL SALAS	[RUBRIC.]
RAMON BENTITEZ.	[RUBRIC.]
TEODORO AROS.	[RUBRIC.]
JULIAN MONTAÑO.	[RUBRIC.]

On the same day, month and year, being in the field and the parties in interest having agreed, in the presence of the promotor fiscal and other assistants, I caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted fifty cords the last of which terminated down the river from the house, on the edge of the ford, on the bank, where I had a cross monument placed, and from there there were measured and counted fifty cords the last of which
 478 terminated in the same valley, at the edge of a hillock (loma), distant three cords, where I had a corner monument placed, and from it there were measured and counted fifty cords the last of which terminated in front of the Guachuca mountains, where I had a cross monument placed on a rocky hillock (loma), and from it there were measured and counted fifty cords the last of which terminated on a cat's claw (chinosa) table-land where I had a corner monument placed, and from there there were measured and counted fifty cords the last of which terminated in the canyon of the Bachata, where I had a cross monument placed, general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, two hundred cords which make two and a half leagues, and from there, the compass being set up and taking the course northwest to southwest, there were measured and counted fifty cords the last of which terminated in the middle of the valley of the San Pedro river, where I had a corner monument placed, and from there, on said course, there were measured and counted fifty cords the last of which terminated, just after crossing the river, at the edge of a hillock (loma), where I had a cross monument placed, and from it there were measured and counted fifty cords the last of which terminated

in the arroyo de las Baras, where I had a corner monument placed, and from it there were measured and counted another fifty cords the last of which terminated in a thicket of dark brush where I had a cross monument placed, and from it there were measured and counted fifty cords the last of which terminated on the slope of the peak, where I had a monument placed, a general rectangular corner, this measurement enclosing two hundred and fifty cords which make two and a half leagues for its side, with which, because of being now late, this operation was suspended to be continued the following day. In testimony of which I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest and those in my attendance with whom I act in the ordinary manner. I attest,

MIGUEL TERAN.

LUCIO GOMEZ.

JOSE RAFAEL SALAS.

TEODORO AROS.

RAMON BENITEZ.

JULIAN MONTAÑO.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

On the 19th day of said month and year, in the presence of the promotor fiscal and other assistants, being in the field, at the monument at the general rectangular corner and taking the course from northwest to southwest, there were measured and counted fifty cords the last of which terminated in a dense thicket of brush, where I had a cross monument placed, and from it there were measured and counted another fifty cords, the last of which terminated on the arroyo del Malpais, where I had a corner monument placed, and from it there were measured and counted fifty cords the last of which terminated on the rise to a red table-land, where I had a cross monument placed, and from it there were measured and counted fifty cords the last of which terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner, and from it, taking the course from southwest to northwest, there were assumed to be enclosed and measured two hundred and fifty cords, which make two and a half leagues, with which operation there were located, the sides measured, surveyed and the area determined of four sitios of land for large stock without any prejudice resulting, thanks to the concurrence of the adjoining owner, and that it may serve the purposes of the law I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest and those in my attendance with whom I act in the ordinary manner according to law. I attest.

MIGUEL TERAN.

LUCIO GOMEZ.

JOSE RAFAEL SALAS.

TEODORO AROS.

RAMON BENITEZ.

JULIAN MONTAÑO.

[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]
[RUBRIC.]

San Pedro, May 21, 1821.—And this survey being concluded I said: Proceed to the appraisement and valuation, which shall

be made by the expert appraisers, Don Ramon Benitez and Don Teodoro Aros, after the acceptance of their office, and thereafter proceed to whatever else is required by law. And by these presents I so decreed, ordered and signed it in the ordinary manner. I attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Consequently, and in virtue of the foregoing order, in the presence of the promotor fiscal appointed, the appraisers being present, Don Ramon Benitez and Don Teodoro Aros, I notified them, in their own persons, to appraise and fix the value, in virtue of the office they had accepted, of the tract this survey covers, and when cognizant of it they said, severally and jointly, that, in view of the ocular inspection and reconnoissance they had made of the lands at the time of their survey, they appraised them, the first three at sixty dollars each and the remaining one at ten dollars; that according to their best intelligence and understanding this valuation is just and legitimate, both on account of the situation of the lands and because they are the common entrance and exit of barbarous enemies, that this consideration, together with that of being public and notorious, which is common and well known, gives the true difficulty; in the understanding that in this operation they proceeded to what the actual circumstances at present dictate, without there being fraud, deception, collusion, or deceit, force or fear therein; for they consider only the oath they have taken. In testimony of which they so executed and signed it with me, the promotor fiscal, and those in my attendance, with whom I act in the ordinary manner.

MIGUEL TERAN. [RUBRIC.]
LUCIO GOMEZ. [RUBRIC.]
TEODORO AROS. [RUBRIC.]
RAMON BENITEZ. [RUBRIC.]
JULIAN MONTAÑO.

The four sitios of land for large stock being appraised and valued, I said: Forward these proceedings to the promotor fiscal appointed for him to deduce, according to their condition, what he considers proper to the benefit of the public treasury. And by these presents

I so decreed, ordered and signed it according to law. I
480 attest.

MIGUEL TERAN. [RUBRIC.]
JULIAN MONTAÑO. [RUBRIC.]

Mr. Judge Surveyor:

The promotor fiscal appointed in this cause says: That, as he has with his own eyes explored the land, examined its situation, frontier, line, and more or less abundance of pasture, timber, and extent of the ground, he judges as just, legal and without burden whatever to the public treasury, for it and all the nation will be benefitted by the protection and settlement of these lands; that in this understanding he is of opinion that the corresponding information as to ability be received: for which you will summon three disinterested and truthful witnesses and that they, after qualifying, state:

1st. If they know the party, and whether the general qualifications of the law apply to them.

2nd. If they know, are aware or have heard said that the denouncer, Don Joseph Jesus Perez, has sufficient property with which to protect these sitios.

3rd. Finally, whether great advantages will result to the public treasury by their protection and settlement.

And when executed you will be pleased to refer them to me to deduce what concerns public rights. The undersigned states this at present.

Fronteras, May 22, 1821.

LUCIO GOMEZ. [RUBRIC.]

Proceed to receive the information which the promotor fiscal appointed solicits, to which end summon the persons of Don Jose Hoyos, Don Felix Quijada and Don Francisco Ramirez, from whom, in the presence of the petitioner, will be received their sworn declarations as solicited, and when done whatever else is required will be proceeded with, and by these presents I so ordered and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I summoned and there appeared in this court Don Jose Hoyos, to whom, in the presence of the promotor fiscal, the oath was administered, which he took in due form of law, before God, our Lord, and a holy cross, under the responsibility of which he promised to tell the truth in so far as he knew and is questioned, and being questioned in the tenor of the foregoing interrogatory, he said to the first:

That he knows the person of Don Jose Jesus Perez, that the general qualifications of the law do not apply to him, and responds

To the second: That he knows and is aware that he has sufficient property to protect and settle the lands, as it is public and notorious, and he responds

To the third: That in his opinion it is beneficial both to the public treasury and to the entire nation, since therefrom will result, without obstacle, traffic, commerce and industry and other liberal

and industrial arts; that this is the truth on the strength of the oath he has taken. He said he is married, twenty-nine years of age, a citizen, and signed it with me and those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
JOSE HOYOS. [RUBRIC.]

Witness:

RAFAEL YESCAS. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

Thereupon, I summoned and there appeared in this court Don Felix Quijada and in his own person, whom I certify I know. I administered to him the oath, which he took in the presence of the promotor fiscal, before God, our Lord, and a holy cross, under the obligation of which he promised to tell the truth in so far as he knew and is questioned and, being questioned in the tenor of the foregoing interrogatory, he said to the first :

That he knows Don Jose Jesus Perez and that the qualifications of the law do not apply to him.

To the second : That he knows by hearsay that the party registering has sufficient stock to stock and protect the tract mentioned and he replies

To the third : That the advantages that would result to the public treasury and to the whole nation from the protection of abandoned and depopulated places are public and notorious and matters of public talk and report and common opinion ; that this is the truth on the strength of the oath he has taken. He said he was unmarried, twenty-five years of age, a citizen, and signed it before me and those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]
FELIX QUIJADA. [RUBRIC.]

Witness :

RAFAEL YESCAS. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the same day, month and year, I summoned and there appeared the person of Don Francisco Ramirez to whom, in the presence of the promotor fiscal, I administered the oath which he took in due form of law, before God, our Lord, and a holy cross, under the obligation of which he promised to tell the truth in so far as he knew and is questioned, and being questioned in the tenor of the foregoing interrogatory, he said :

To the first : That he knows Don Jose Jesus Perez and that the general qualifications of the law do not apply to him.

To the second : That he knows by hearsay that he has sufficient stock for the protection and stocking of this tract.

To the third : That the advantage that would result to the public treasury and to all the nation by its settlement is clearly undeniable and that this is the truth according to his judgment. He said he was married, forty years of age, a citizen, and did not sign because he does not know how. I did so with those in my attendance with whom I act in the ordinary manner, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

And this information asked for by the promotor fiscal being concluded, I said: Return it to the possession of said promotor for him to deduce what he deems convenient. I so decreed and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Mr. Judge Surveyor:

Don Lucio Gomez, the promotor fiscal appointed for this survey, says: That, in view of the condition of the proceedings, and that from them, according to their supposed condition, the protection and settlement of the tract of San Pedro result to the benefit of the public treasury and of all the nation, in consideration of the rights of said nation and that it may be acquired, adjudicated and sold to the best and highest bidder, you will be pleased to publish for thirty consecutive days the appraisement at which they are, admitting the bids, raises and higher offers that result and holding their rights in reserve till the day of their final disposition and sale, which shall be at the capital at Arizpe, before the provincial board of the royal treasury, presided over by the governor intendent of the province, who shall previously set a day for the sale, and do everything else required by the custom of universal legal practice, according to law. This is all the undersigned has to state submitting his judgment to the probity of the wise government and to the learning of the deputy legal adviser of the province.

Fronteras, May 26, 1821.

LUCIO GOMEZ. [RUBRIC.]

Fronteras, May 27, 1821.—Having examined the opinion of the promotor fiscal appointed, I said: Publish the tract of San Pedro and its appraisement admitting the bids, raises and higher offers that may be made, and by these presents I so decreed, ordered and signed it, according to law.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On said day, month and year, I, the judge surveyor, caused Lazaro Quijada, at the sound of the drum and in a clear, loud and distinct voice, to announce: It is made public and notorious that Don Jose Jesus Perez has registered the place of San Pedro and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a well-founded right or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be in Arizpe on the day designated by the governor intendent of the province, to which end his actions and rights are reserved, and no bidder having appeared I entered it as a minute which I

signed with those in my attendance, according to law, as I certify, and on this paper without prejudice to the royal revenue.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

483 On the 28th day of said month and year, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 29th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 30th of the current month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 31st day of said month and year, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidders I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 1st of the month of June of the year 1821, I, the alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 2nd day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 3rd day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute, which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 4th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidders, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness :

FELIX QUIJADA. [RUBRIC.]

Witness :

JULIAN MONTAÑO. [RUBRIC.]

On the 5th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier,

and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 6th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 7th of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 8th of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 9th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

485 Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 10th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 11th day of said month and year, I, the judge surveyor, caused Lazaro Quijada to announce, at the sound of the drum and in a loud, clear and distinct voice: It is made public and notorious that Don Jose Jesus Perez has registered the place of San Pedro and, his position being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a right to the tract or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be at Arizpe on the day designated by the governor intendent of the province, for which purpose his actions and rights are reserved, and no bidder having appeared, I entered it as a minute which I signed with those in my attendance, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 12th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 13th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 14th of said month, I, the alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

486 On the 15th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 16th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 17th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 18th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public

crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 19th day of the current month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 20th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 21st day of this month, I, the said alcalde, caused
487 the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 22nd day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 23rd day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 24th day of said month, I, the said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed, according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 25th day of said month, I, said alcalde, caused the grant and appraisement of the place of San Pedro to be brought before the public at the sound of the drum and by the voice of the public crier, and there being no bidder, I entered it as a minute which I signed according to law. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

Witness:

JULIAN MONTAÑO. [RUBRIC.]

On the 26th day of the current month and year, I, the constitutional alcalde and judge surveyor of this grant, said: The proceedings corresponding to the survey being completed, forward them to the superior authority of the governor intendent, for His Excellency to make such orders as meet his superior pleasure and by these presents I so decreed, ordered and signed it before those in my attendance and on this paper without prejudice to the public revenue. I attest.

MIGUEL TERAN. [RUBRIC.]

Witness:

JOSE HOYOS. [RUBRIC.]

Witness:

FELIX QUIJADA. [RUBRIC.]

488 Mr. Governor Intendent:

I transmit to your hands the proceedings of survey, ocular inspection, appraisement and publications executed on the depopu-

lated tract of San Pedro in favor of Don Jose Jesus Perez for Your Excellency to make such order as may be just. God preserve Your Excellency many years.

Fronteras, June 26, 1821.

MIGUEL TERAN. [RUBRIC.]

Mr. Governor Intendent, Don Antonio Cordero.

Arizpe, June 9, 1821.—To the promotor fiscal.

CORDERO.

Mr. Intendent:

The promotor fiscal of this intendency says: That these proceedings of survey, appraisement, valuation, information of ability and publications of four sitios of royal land for raising large stock comprised in the place called San Pedro, situate in the jurisdiction of the presidio of Fronteras, appraised in the sum of one hundred and ninety dollars, at the rate of sixty dollars each for the first three and ten dollars for the remaining one, are executed in full conformity with the royal and superior orders that are a rule in the matter. This being understood, and in attention to the merit which of itself is involved in the granted petition of the party in interest, because that royal tract is so much the more dangerous on account of the Apache enemy who hostilizes that frontier, the settlement of the same is so much the more convenient and advantageous, the fiscal defender of the public treasury asks that you be pleased, if you think proper, to order that, upon citation of the parties, the celebration of the three customary public offers be proceeded with in this capital, in solicitation of bidders for the final sale of said surveyed lands, which shall be determined at the last of them in favor of the highest and best that results, and he shall be made to understand that he must pay into the treasury the principal value at which said four sitios were sold to him, their half annate tax and 18 per cent. for transmittal, the 2 per cent. ordered collected as a general tax and three dollars for the officers aggregated to the office of the auditor general of the army, and that when these proceedings are examined and approved in the provincial board, the corresponding certificate being aggregated to it as a voucher for said payment, let report be made therewith to the superior board for the decision that is proper. This is my opinion, which has not been issued from the fiscal office till today, because the proceedings have been involuntarily mislaid therein, but you, nevertheless, will decide what meets your superior pleasure.

Arizpe, June 25, 1822.

FRANCISCO PEREZ. [RUBRIC.]

Arizpe, July 3, 1822.—As appears to the promotor fiscal of this intendency in his foregoing reply, proceed to the celebration of the three public offers and sale of the lands called San Pedro of which these proceedings treat, first summoning the attorney of the party in interest, Don Jose Maria Serrano. The intendent of this province

so decreed, ordered and signed it with attending witnesses in
489 default of every kind of notary.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

Thereupon, Don Jose Maria Serrano being present, he was notified of the fiscal opinion and the order in concurrence which precedes and made himself cognizant thereof and signed it with the intend and his attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

1st offer.—In the city of Arizpe, on the 3rd day of the month of July, there having assembled as a board in this said capital the intend, as president, and the members who compose it, for the purpose of making the first offer of the lands to which these proceedings refer, they caused many individuals to be assembled, at the sound of the drum, in the office of this intendency, and the public crier, Loreto Salcido, to proceed, in their presence, to make a publication, as he in effect did, saying in a loud and clear voice: There are going to be sold by this board of sales four sitios of royal land for raising cattle comprised in the place called San Pedro, situate in the particular territory of the presidio of Fronteras, surveyed for Don Jose Jesus Perez of this city, and appraised in the sum of one hundred and ninety dollars, at the rate of sixty dollars each for the first three and ten dollars for the other one. Whoever wishes to make a bid for said royal land, come forward and make it before this board where that made in regular form will be admitted, with the understanding that in the third and last offer, which is to be made the day after tomorrow, the final sale will be made to the best and highest bidder. And no bidder having appeared, it was entered as a minute which the president and members of this board of sales signed.

BUSTAMANTE.

[RUBRIC.]

FUENTE.

[RUBRIC.]

ELIAS GONZALEZ.

[RUBRIC.]

PEREZ.

[RUBRIC.]

2nd offer.—In said city on the 4th day of said month and year, the making of the second offer in these proceedings was proceeded with, being made in the same terms as the first proceeding, with only the difference of stating to the public that the final sale would be made tomorrow. But no bidder having appeared, it was entered as

a minute which the president and members of this board of sales signed.

BUSTAMANTE.	[RUBRIC.]
FUENTE.	[RUBRIC.]
ELIAS GONZALEZ.	[RUBRIC.]
PEREZ.	[RUBRIC.]

3rd offer.—In the city of Arizpe, on the 5th day of the month of July, 1822, having assembled as a board of sales in this said capital the intendent, as president, and the members who compose it for the purpose of making the third and last offer of the lands to which these proceedings refer, they caused many individuals to assemble, at the sound of the drum and the voice of the public crier, in the office of this intendency and Loreto Salcido to proceed to make, in their presence, a publication, as he in effect did, similar in all respects to the one set out in the preceding offer, with only the difference of announcing to the public that the final sale is now to be made to the highest and best bidder. In which act appeared Don Jose Maria Serrano as attorney of Don Jose Jesus Perez again offering the value of the land, and the hour for midday prayer of this day having already been struck, the public crier finally said: Once, twice, three times; sold, sold, sold; may they do good, good, good to Don Jose Jesus Perez. In these terms this act was concluded, the four sitios of royal land referred to in these proceedings being solemnly sold in favor of this party in interest for the sum of one hundred and ninety dollars and in due witness thereof this minute was entered which the president and members of this board of sales signed with the attorney, Don Jose Maria Serrano.

BUSTAMANTE.	[RUBRIC.]
FUENTE.	[RUBRIC.]
ELIAS GONZALEZ.	[RUBRIC.]
PEREZ.	[RUBRIC.]

Arizpe, July 6, 1822.—Forward these proceedings by way of reference with a testimonio authenticated and inclusive of the superior determinations that govern in the matter to the attorney, Don Jose Maria Serrano, for him to proceed, within three days, to state, in favor of his party, whatever occurs to him in the present matter, notifying him to appoint in Mexico a person under pay to attend to it at that court. The intendent *ad interim* of this province so decreed and signed it with attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

NOTE.—On said day, month and year, these proceedings and said testimonio were delivered, on — written leaves, to said attorney.

[RUBRIC OF BUSTAMANTE.]

Mr. Intendent :

I, Don Jose Maria Serrano, as attorney of Don Jesus Perez, a resident of this place, appear before you and state: That I promptly return these proceedings on the lands called San Pedro and the testimonio that have been referred to me, stating that I am satisfied with what has been done up to their actual condition of sale, as they are fully in conformity with the superior orders that govern in the matter and are included in said testimonio, and it only remains for me to pray you to be pleased to provide for the prompt conclusion and conduct of these proceedings so that, when the approval of the superior board of the treasury is obtained, there may be
 491 issued in favor of my party the corresponding title of grant and confirmation of the four sitios which said land contains, being prompt to appoint in Mexico a person under pay and expenses to be charged with managing the present matter at that court. Therefore I ask and pray you to be pleased to order as I request, as my party will thereby receive grace and favor in whose conscience I swear there is no bad faith, etc.

JOSE MARIA SERRANO. [RUBRIC.]

Order upon examination.—In the city of Arizpe, on the 6th day of July, 1822, the intendent *ad interim* of the provinces of Sonora and Sinaloa, proprietary treasurer, Don Ignacio de Bustamante y Velasco, having examined these proceedings of survey, appraisement, publications, offers and sale of the lands called San Pedro, surveyed for raising large stock and horses in behalf of Don Jose Jesus Perez, a resident of this city, and situated in the particular territory of Fronteras, the reply given by his attorney, Don Jose Maria Serrano, in the foregoing communication, with everything else set out and proper to examine, said: That declaring, as he declares, the said proceedings sufficient, conformable and in accordance with the superior orders that govern in the matter and admitting, as he at once admits, the said Don Jose Jesus Perez to composition with the imperial treasury for said royal land, it was his duty to order and he did order that his attorney be notified and informed to proceed to pay into this treasury the sum of two hundred and eight dollars, one grain, in this form: one hundred and ninety dollars as the principal value at which there were sold to said party in interest the four sitios which said tract comprises; eleven dollars, one real, eight grains, for the half annate tax and their 18 per cent. for transmission; three dollars, six reals, five grains, being the two per cent. ordered collectes as a general tax, and the remaining three dollars as perquisites of the extinguished office of auditor of said revenue, and when this payment is made and the corresponding certificate as a voucher therefore is attached to these proceedings, report with the same to the superior board of the treasury for its approval or the decision that is proper. The intendent by this order upon examina-

tion so provided, ordered and signed it with attending witnesses, in default of a notary.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

Thereupon, the attorney, Don Jose Maria Serrano, being present, he was notified of the foregoing order of which he made himself cognizant and signed it with the intendent and attending witnesses.

BUSTAMANTE. [RUBRIC.]

Witness:

JOAQUIN ELIAS GONZALEZ. [RUBRIC.]

Witness:

ANTONIO APALATEGUI. [RUBRIC.]

PROVINCIAL BOARD OF THE IMPERIAL TREASURY,
ARIZPE, July 7, 1822.

Approved. Let it be declared at once that there have been legally, publicly, and solemnly sold by the board of sales in this capital, on the 5th instant, in favor of Don Jose Jesus Perez, the four sitios of royal land for raising large stock which the place called 492 San Pedro comprises, situated in the particular territory of the presidio of Fronteras, for the sum of one hundred and ninety dollars, being their just value, and in consequence report with these proceedings to the superior board of the treasury for its approval or the decision that may be proper, as ordered by this intendency in its foregoing order. The president and members of this provincial board so ordered and signed it.

BUSTAMANTE.	[RUBRIC.]
FUENTE.	[RUBRIC.]
ELIAS GONZALEZ.	[RUBRIC.]
PEREZ.	[RUBRIC.]

Arizpe, July 7, 1822.—Comply with the resolution of the provincial board of this intendency in its foregoing resolution of today.

BUSTAMANTE. [RUBRIC.]

Antonio Carrillo, commissary of the branch of the treasury in Arizpe in the internal State of Sonora,

Certifies: That at folio 55 of the hand book of receipts and disbursements for the year 1822, there is made the following entry:

July 8.—Receipt of two hundred and eight dollars, one grain, paid into this treasury by Don Jose Maria Serrano, in the name of and as the attorney of Don Jose Jesus Perez, a resident of this city, in this form: 190 dollars as the principal value at which were sold to him by this intendency four sitios of royal land for raising large stock comprised in the place called San Pedro, situated in the particular territory of the presidio of Fronteras; 11 dollars, 1 rl. 8 gr. for the half annate tax and its 18 per cent.; 3 dollars, 6 rs. 5 gr. for the 2 per cent. ordered collected as a general tax, and the remaining three dollars as the perquisites of the extinguished office of the auditor of said revenue, as explained in the communication of said intendency marked No. 30..... \$208.01

FUENTE.

GONZALEZ.

JOSE MARIA SERRANO.

And in witness thereof wherever necessary I give the present certificate in duplicate at the request of the treasurer general of the State, Don Jose Maria Mendoza, on this common paper, in default of the official, in Arizpe, on the 25th of October, 1832.

ANTONIO CARRILLO. [RUBRIC.]

Mr. Treasurer General:

I, Ignacio Perez, in the name of my brother, Jose de Jesus, appear before you in due form and state: That from the original proceedings which I place in the hands of Your Excellency you will have the kindness to inform yourself that on the 5th of July, 1822, there was sold in favor of my brother the land called San Pedro, situated in the jurisdiction of Fronteras, including four sitios of land and having lawfully exchanged the right he had thereto with
493 citizen Rafael Elias and inasmuch as the corresponding title to the grant has not yet been issued, I ask and pray you to be pleased to order the corresponding title issued to said citizen Rafael Elias, as the actual owner and proprietor of the land of San Pedro. It is grace I ask of Your Excellency protesting there is no bad faith.

Arizpe, October 25, 1832.

IGNACIO PEREZ. [RUBRIC.]

Arizpe, October 25, 1832.—Presented with the accompanying proceedings, give account with the necessary report to the supreme magistrate of the State, in compliance with the provisions of article 28 of law No. 30 of May 20, 1825, for the corresponding orders. The treasurer general of the State of Sonora so provided, ordered and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Witness:

MARIANO ROMO. [RUBRIC.]

Witness:

JOSE MARIA PEREZ. [RUBRIC.]

Arizpe, October 31, 1832.—Ag-regate to these proceedings a copy of the consultation sent to the supreme magistrate and the original resolution of said superior authority and issue in virtue thereof the corresponding title to the grant in favor of citizen Rafael Elias, for four sitios of land at the place of San Pedro. The treasurer general of the State so provided and signed it with attending witnesses, according to law.

MENDOZA. [RUBRIC.]

Witness :

LUIS CARRANCO. [RUBRIC.]

Witness :

BARTOLO MIRANDA. [RUBRIC.]

Treasury general of the State.

MOST EXCELLENT SIR: Citizen Ignacio Perez of this place has put in my hands, with the corresponding application, the proceedings which I have the honor to place in the hands of Your Excellency, comprehensive of the registry survey, appraisement, publications and sale of four sitios of land, at the place called down the San Pedro river, in favor of citizen Jose de Jesus Perez. He also shows by the certificate, which is likewise aggregated to the proceedings, that he paid into the national treasury in this capital the sum of two hundred and eight dollars, one grain, for the principal value of the land and its corresponding taxes; and he asks finally that, having made an exchange with citizen Rafael Elias, the corresponding title for the grant be issued to him, complying at the same time with article 27 of law No. 30 of May 20, 1825, and this treasury in reporting to Your Excellency in compliance with the 28th — of said law, has the honor to state to you that it considers said proceedings sufficient, legal and concluded with the formalities established by the laws and consequently in condition for the issue of the title asked for, nevertheless, Your Excellency will deign to decide whatever meets your superior pleasure.

God and liberty. Arizpe, October 25, 1832.

JOSE MARIA MENDOZA.

His excellency, the governor of the State.

It is a copy.

Arizpe, October 25, 1832.

MENDOZA. [RUBRIC.]

494 A seal which reads: Government of the free State of Sonora.

Having examined the proceedings on the lands which Your Excellency transmits with your note of the 25th ultimo, comprehensive of four sitios surveyed at the place called down the San Pedro river, in favor of Don Jose Jesus Perez, I return it to Your Excellency for you to issue to Don Rafael Elias the corresponding title for the

grant, in view of the exchange Don Ignacio Perez of this place has made with him.

God and liberty. Arizpe, October 31, 1832.

IGNACIO BUSTAMANTE. [RUBRIC.]
LUCAS RODRIGUEZ, [RUBRIC.]
Chief Clerk.

Mr. Treasurer General of the State.

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DEFENDANTS' EXHIBIT D 1d.

Title to the grant of four sitios of land for breeding cattle and horses that comprise the place called San Juan de las Boquillas y Nogales, in the jurisdiction of the presidio of Santa Cruz, issued by the treasurer general of the State of Sonora, in favor of citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix.

Jose Maria Mendoza, treasurer general of the free, independent and sovereign State of Sonora:

Whereas article 11 of the sovereign decree, No. 70, of the general congress of the union, dated August 4th, 1824, cedes to the States the revenues which the federation did not reserve to itself in said law, one of which is that from lands in their respective districts which consequently belong to them, and for the disposal of which the honorable constituent Congress of what was the united State of Sonora and Sinaloa, enacted law No. 30 of the 20th of May, 1825, as did also the successive legislatures other decrees relating thereto; and whereas citizens Captain Ignacio Elias Gonzalez and Juan Nepomuceno Felix have, on the 12th of March, 1827, made to the treasurer general of said State formal denouncement of the lands called San Juan de las Boquillas y Nogales, situated in the jurisdiction of the presidio of Santa Cruz, it was admitted in conformity with law on the 1st of July of said year. The petition of denouncement, decree of commission and act of obedience are of the following tenor:

To the treasurer general:

Ignacio Elias and Eulalia Elias appear before you in due form and state: That, being in need of land for live stock, they denounce, in company with Rafael Elias, Captain Ignacio Elias and Nepomuceno Felix, the public land that is bounded by the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of Tres Alamos, and obligate themselves to pay the nation the amount to which it is entitled and whatever else that may be just, until we acquire the title to the grant and confirmation, for which purpose Your Excellency will be pleased to hold said land as registered and denounced.

496 Therefore we pray Your Excellency to be pleased to order done as we petition, from which we will receive favor.

Arizpe, March 12th, 1827.

In the absence of and at the request of Ignacio Elias:

JOAQUIN ELIAS.
EULALIA ELIAS.

Cosalá, July 1st, 1827.—The police alcalde of Santa Cruz, with power which is conferred upon him therefor, without prejudice to a third party who represents a better right, and after summoning the owners of coterminous lands, will proceed to the survey, appraisal and publication for thirty consecutive days of the land mentioned in the foregoing denouncement, restricting himself fully to the sovereign decree of the honorable constituent Congress of the State, No. 30, of the 20th of May, 1825, and the regulations that accompany it, and, when said proceedings are completed, he will forward them to this office of the treasury and summon the bidders to appear, in person or by agent, at the sale that is to take place in this office after the three customary public offers.

The treasurer general of the State, Nicolas Maria Gaxiola, thus decreed and signed.

GAXIOLA.

Presidio of Santa Cruz, August 20th, 1827.—Comply with what is ordered in the decree of the treasurer general of the State, Nicolas Maria Gaxiola, and to that end, upon citation of the parties in interest, or their agent therefor, and the owners of coterminous lands, if any there be, and accompanied by the necessary assistants who shall be appointed for the purpose, go myself to the ranch of San Pedro for the purpose of proceeding to the survey of the lands denounced, that is, those that belong and correspond to citizens Nepomuceno Felix and Captain Ignacio Elias, which survey shall be made separately from those which are to be made for the other denouncers who made it in company, and appear in the copy of the application with which these proceedings begin.

Citizen Pablo Fraijo, constitutional police alcalde of the presidio of Santa Cruz, thus determined, ordered and signed before his attending witnesses, in default of a notary public, according to law.

PABLO FRAIJO.

Witness:

SATURNINO LIMON.

Witness:

JOSE M. SOTELO.

The alcalde commissioner proceeded immediately to the appointment of assistants, tallyman, recorders and chainmen, who were citizens Mauricio Neira, Francisco Sandoval, Jose Samaniego, Manuel Soto and Camilo Arvizu, who accepted and took the oath to comply faithfully and lawfully with their respective charges and, upon citation of the party in interest and of the owners of coterminous lands, the alcalde made the survey set out in the following proceedings:

At the place called San Juan de las Boquillas, on the 24th day of the month of August, 1827, I, said judge surveyor, to begin the survey of the lands denounced by citizens Nepomuceno Felix and Captain Ignacio Elias, delivered a well-twisted and well-stretched cord to the appointed assistants and a Castilian vara,

with which there were measured and counted on said cord fifty varas and, when this operation was completed, its extremities were tied to a pole and, in the presence of Rafael Elias, as agent of citizen Nepomuceno Felix and Captain Ignacio Elias, the survey was begun from the point fixed for center, which was where the valley of the Babocomari unites with that of the San Pedro, in front of Mule mountains, and taking a course to the south there were measured and counted two hundred and forty-five cords (245) to their termination at the survey of the ranch of San Rafael del Valle which belongs to citizen Rafael Elias, the monument of which at that place serves as a bound to both parties in interest. And having returned to the center, a course was taken to the north and there were measured and counted three hundred cords (300) to their termination below the Quíburi marsh, where there is a small pass, in front of the Peñascosa chain of mountains, where I ordered a monument of stones placed, and having returned to the center a course was taken to the west and there were measured and counted thirty-eight (38) cords over the valley and in front of the Quíburi near some small lava (malpais) hills, where I ordered a monument to be placed. And having returned to the center a course was taken to the east, up to thirty-eight (38) cords being measured which terminated in its valley in front of the Mule range of mountains, where a pile of stones was placed for a monument, with which and seventy-six cords (76) which were measured at both extremities, north and south, at right angles, with the corresponding monuments at their ends, this survey was completed, four sitios resulting therefrom in favor of said citizen Captain Ignacio Elias and Nepomuceno Felix, residents of the city of Arizpe, and with which citizen Rafael Elias, as agent of said parties in interest, was satisfied and accepted the land purchased, and was notified that he must opportunely mark his boundaries with monuments of stone and mortar, as is provided.

And in witness thereof I enter it in these minutes which the appointed agent and my attending witnesses signed with me, in default of a notary public, according to law, the other assistants not doing so because they do not know how to write.

PABLO FRAJO.
RAFAEL ELIAS.

Witness:
SATURNINO LIMON.

Witness:
JOSE MA. SOTELO.

Thereupon the alcalde proceeded to the corresponding appraisalment of the lands by intelligent experts, who were citizens Manuel Soto and Camilo Arvizu, who performed said office after taking the customary oath and in accordance with their practical knowledge and in conformity with the superior provisions on the matter, appraised said four sitios of land at two hundred and forty dollars (\$240) at the rate of sixty dollars each, as they have running water. With this appraisalment the alcalde published them for thirty consecutive days from the 30th of August, 1827, to the 28th of Sep-

tember of the same year, in solicitation of bidders. None appeared. He completed this expediente and by an order of the 30th of said month and after citation of the parties in interest, 498 forwarded it for its termination to the treasury general which, by decree of the 7th of February, 1828, referred it to the attorney general for his action, the reply of whom is literally as follows :

To the treasurer general :

This is an expediente that relates to the survey of four sitios of land for breeding cattle and horses made by the alcalde of the presidio of Santa Cruz for citizens Captain Ignacio Elias and Nepomuceno Felix, made by virtue of a denouncement in the place of San Juan de las Boquillas y Nogales, jurisdiction of said presidio. Its appraisement in the opinion of the individuals who performed that office was reduced to two hundred and forty dollars, which in the terms of the law and by the public crier did not increase and they were sold for that sum to the parties in interest, without any opposition appearing.

A doubt has occurred to the attorney general as to declaring the survey valid as no competition occurred among the parties because it was not explained in the proceedings whether use was made of the compass, an instrument indispensable for observing the exact course that should be taken, but in consideration of the inconvenience that would result to the parties in interest and the damage that would occur from a new survey of the land, this office is willing to overlook this defect and that the steps proper to the case be proceeded with.

Alamos, February 7th, 1828.

MANUEL DE LA BRENA.

And the treasury general having approved the hereinbefore-inserted opinion of the attorney general, by decree of the 16th of April, proceeded to the three public offers on said day, the 16th, 17th and 18th in solicitation of bidders and none having appeared, the four sitios of land for breeding cattle and horses, at the place of San Juan de las Boquillas y Nogales, were sold to citizens Captain Ignacio Elias and Nepomuceno Felix, as appears from the third offer, which is as follows :

In said city, on the 18th day of the month of April, 1828, the treasurer general, the first alcalde and the administrator of revenues, as the individuals who compose the board of sales, having assembled proceeded to make the last offer for the final sale of the four sitios of land referred to in this expediente, and made it in the same terms as the first preceding, with the sole addition that, at this time, the final sale has to be made. And the hour for midday prayer of this day having already struck, and no other higher bidder having appeared, the public crier for the last time said : Once, twice, three times ; sold, sold, sold ; may it do good, good, good to Nepomuceno Felix and Captain Ignacio Elias.

In these terms this act was terminated, the four sitios of land for

breeding cattle and horses, situated in the jurisdiction of Santa Cruz and called San Juan de las Boquillas y Nogales, being publicly and solemnly sold to these parties in interest in the sum of two hundred and forty dollars, at which they were appraised.

And in witness thereof it was entered in these proceedings which the president and members of the board signed, as also did the agent of said parties in interest, who is Tiburcio Gomez.

GAXIOLA.
GOMEZ.

499 On the 28th of April of said year the agent, citizen Tiburcio Gomez, proceeded to pay into the treasury the two hundred and forty dollars at which said lands were sold, as appears from the certificate that follows:

I, Nicolas Maria Gaxiola, treasurer general of the State of the West, certify: That, at folio 13 reverse of the manual for the current year there is entered, under this date, the entry that reads thus:

Amount for grant of land, two hundred and forty dollars, which Tiburcio Gomez paid in the name of Captain Ignacio Elias Gonzalez and Nepomuceno Felix, residents of Arizpe, for the grant of four sitios of land for breeding cattle and horses, situated in the jurisdiction of the presidio of Santa Cruz, with running water, the appraisement of which was made at the rate of sixty dollars per sitio and which were sold to said individuals by the board of sales in this office on the 18th instant, and known by the name of San Juan de las Boquillas y Nogales..... \$240.00

GAXIOLA.
TIBURCIO GOMEZ.

And in witness thereof I give the present certificate.
Alamos, April 21st, 1828.

NICOLAS MARIA GAXIOLA.

The foregoing certificate being aggregated to the original expediente, the latter was terminated with all the requirements and formalities provided by the laws and remains in custody in the archives of this treasury general, as a perpetual testimony.

Therefore, using the powers the laws confer on me, by these presents and in the name of the sovereign State of Sonora, I grant, in due form of law, four sitios of land for breeding cattle and horses that comprise the place called San Juan de las Boquillas y Nogales, situated in the jurisdiction of the presidio of Santa Cruz, to citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix, residents of this capital, to whom I cede, give and adjudicate, said lands by way of sale and with the conditions, firmness and stability the laws establish, for themselves, their children, heirs and successors, with all their entrances, exits, uses, customs, servitudes, timbers, woods,

pastures, waters, springs, drinking places, and everything else that pertains to them, with the precise qualification and express condition that they are to keep said lands populated and protected, without their being unprotected, deserted or depopulated for any time, with the understanding that, if their total abandonment should occur for the space of three consecutive years, upon proof of the fact, they shall be declared public lands and shall be adjudicated again to the highest bidder, excepting, as is just, those cases where the want of protection is on account of the notorious invasion of enemies, and only for the time of such occurrences, with caution to citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix, their children, heirs and successors, as they are strictly cautioned, that they shall restrict and limit themselves to the lands, appurtenances, metes and bounds specifically set out in the hereinbefore-inserted proceedings of survey, observing and exactly complying with article 30 of law No. 30 of the 20th of May, 1825, which imposes upon them the obligation to maintain at their boundary termini monuments of stone and mortar, under the penalty of twenty-five dollars, which will be exacted of them, if they fail, for the common funds, and said monuments will be constructed by the proper judge at the expense of the parties in interest.

And I order and command the local judges, justices and authorities who at present are or shall hereafter be in the district of this capital, for the sake of good and prompt administration of justice and in compliance with the laws on the matter, not to allow said parties in interest nor their successors to be, in any manner, disturbed, annoyed or molested in the free use, exercise, property, dominion and possession of the said four sitios that comprise the place called San Juan de las Boquillas y Nogales, but rather that they constantly watch and see, with the greatest vigilance and activity, that they are always protected and maintained in the quiet and peaceable possession to which they are entitled by lawful right, so that, in this manner, they may freely sell, exchange, barter, donate, transfer, cede and alienate said lands at their free will and election, as absolute owners.

In which terms I issued the present formal title of grant to citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix, and their heirs and successors, delivering it to them for their security, after taking note (toma de razon) thereof in the proper book.

Given in the capital at Arizpe, on the 8th day of the month of May, 1833, authenticated and signed by me and sealed with the seal of this treasury general, before the undersigned witnesses of my attendance, in default of a notary, there being none, according to law.

JOSE MARIA MENDOZA.

Witness :

LUIS CARRANCO.

Witness :

BARTOLO MIRANDA.

Note (toma de razon) of the present title is made at folio 11 of the proper book that exists in this treasury general.

[A RUBRIC.]

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MAP.

DEFENDANTS' EXHIBIT E.

(Here follows map marked page 501.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILM

DEFENDANTS' EXHIBIT A 1.

Extract from Executive Document No. 41, Thirtieth Congress, First Session.

Report of Lieut. Col. P. St. George Cooke of his march from Santa Fé, New Mexico, to San Diego, Upper California.

SAN LOUIS REY, CALIFORNIA, *February 5, 1847.*

SIR: * * * I ascended a high peak, and, there taking the bearings of distant landmarks, which they professed to know, earnestly consulted with them and the interpreter, who had lately passed through Sonora, as to the best course to be taken. They were deceived themselves, as I believed, so deceived me, as to the direction of Yanos, and gave a different opinion as to the unsafety of venturing into the prairie, and so, that it would be best to take the Yanos road, and thence, by an old trail, a road formerly used to connect the presidios or frontier garrisons, Yanos, Fronteras, Fruson, &c. * * *

A day or two after, we found a trail leading toward San Bernardino; and the fourth day, early, just after Chabonnaux, the only guide then present, had very unwarrantably gone off hunting, we fell into what was believed to be the trail or road from Yanos to Fronteras; and it immediately led us to a precipitous and rocky descent, of perhaps a thousand feet, amongst broken, wild and confused mountain peaks, which extended as far as could be seen from our great height. I soon found the trail could not be made passable for the wagons; and I hunted myself for a more promising descent, and, in fact, saw a part of the proper one, but very inaccessible from the mountain height on which I then was.

503 My next care was to seek the nearest ground suitable for a camp; fortunately I found water about a mile off. All pronounced the country before us impassable for wagons; I, nevertheless, immediately organized a large working party, under Lieutenant Stoneman, and sent him to make a passage. That night Leroux arrived, bringing an Apache chief, whom he had got hold of with difficulty, and probably great address; so shy were they found. Next morning, it was owing to Leroux's decided assertions and arguments that there could be and was no other known pass but the horse trail, that I did not insist on his thorough examination. He even asserted, but was mistaken, that he had examined the opening I had seen and described, and believed might be a wagon road. Meanwhile, the party continued the second day hard at work with crowbar, pick, &c.; whilst I sent one company and about half of the baggage, packed on mules, to the first water on the trail, in a deep ravine below. It was about six miles, and the mules were brought back in the evening. Next morning they took the rest of the loading, and I succeeded that day, with much labor and difficulty, breaking one, in getting the wagons to the new camp. Dr. Foster accidentally found the outlet of an old wagon road, (into mine) and,

following back, it led him to the verge of the plain, about a mile from our point of descent. He says this is called the pass of Guadalupe: and that it is the only one, for many hundred miles to the south, by which the broken descent from the great table-land of Mexico can be made by wagons, and rarely by pack mules. I hold it to be a question whether the same difficult formation does not extend north, at least to the Gila. If it is so, my road is probably the nearest and best route. But if the prairie, to the north, 504 is open to the San Pedro, and water can be found that improvement will make my road not only a good but a direct one from the Rio Grande to the Pacific.

San Bernardino is a ruined ranche, with buildings enclosed by a wall, with regular bastions. It overlooks a wide, flat and rich valley, watered by a noble spring, which runs into one of the upper branches of the Huaqui river, which is but a few miles distant. Here I succeeded in meeting a few of the Apaches, and obtained a guide, who went about 20 miles, and described the rest of the route to the San Pedro. He was afraid to venture further, and returned alone over the plain, the point where he turned back was within fourteen miles of the presidio of Fronteras. * * *

I made the next sixty-two miles, to the San Pedro river, with little more difficulty than cutting my way through dense thickets of mezquite and many other varieties of bushes, all excessively thorny. It was but 27 miles without water over the last divide; and there was snow one day, and for about two weeks, at that time, we suffered with cold. * * *

P. ST. GEORGE COOKE,
Lieut. Col., Commanding Mormon Battalion.

Brig. Gen. S. W. Kearny, commanding army of the West, San Diego, Upper California.

504½ *Copy of a Letter to the Governor of Sonora.*

CAMP AT TUCSON, SONORA, *December 18, 1846.*

Your Excellency:

The undersigned, marching in command of a battalion of United States infantry, from New Mexico to California, has found it convenient for the passage of his wagon train, to cross the frontier of Sonora. Having passed within fifteen miles of Fronteras, I have found it necessary to take this presidio in my route to the Gila.

Be assured that I did not come as an enemy of the people whom you govern; they have received only kindness at my hands.

Sonora refused to contribute to the support of the present war against my country, alleging the excellent reasons that all her resources were necessary to her defence from the incessant attacks of savages; that the central government gave her no protection, and was therefore entitled to no support. To this might have been added that Mexico supports a war upon Sonora; for I have seen New Mexicans within her boundary, trading for the spoil of her people, taken by murderous, cowardly Indians, who attack only to lay waste, rob,

and fly to the mountains; and I have certain information that this is the practice of many years. Thus one part of Mexico allies itself against another.

The unity of Sonora with the States of the North, now her neighbors, is necessary effectually to subdue these Parthian Apaches.

Meanwhile I make a wagon road from the streams of the Atlantic to the Pacific ocean, through the valuable plains and mountains, rich with minerals, of Sonora. This, I trust, will prove useful to

the citizens of either republic, who, if not more closely, may
505 unite in the pursuits of a highly beneficial commerce.

With sentiments of esteem and respect, I am Your Excellency's most obedient servant,

P. ST. GEORGE COOKE,
Lieut. Col., Commanding U. S. Forces.

To his excellency Sr. Don Manuel Gandara, governor of Sonora, Ures., Sa.

Pages 553-563.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk*,
By ———, *Deputy*.

506

MAP.

DEFENDANTS' EXHIBIT A².

(Here follows map marked page 506.)

507

DEFENDANTS' EXHIBIT A³.

Compared. F.

Extract from Executive Document No. 135, Thirty-fourth Congress, 1st Session.

Report of the United States and Mexican boundary survey, by William H. Emory, Washington, 1857.

BOUNDARY COMMISSION, SAN DIEGO, April 2, 1849.

SIR: * * * I think it also proper to inform the department, for the benefit of the operators from the "Paso del Norte," that authentic information has reached here, that the Mexican frontier towns of Fronteras and Santa Cruz, which have always been counted on by the officers of the commission to furnish supplies, have been ravaged by the wild Indians, and deserted by the inhabitants, and the means of subsistence of the Pimos Indians have been eaten out by the emigrants. In addition to the American emigration, a dense stream of "Sonoreans," and other Mexicans, is now pouring over a portion of the same route into California, desolating the herbage and means of subsistence as they pass. Five thousand and upwards have already penetrated the country this season, and it is estimated by intelligent men that fifteen thousand more are in movement in the same direction.

Page 20.

The height of the pass leading to Santa Cruz is not less than 1,000 feet above the respective valleys on either side, being equally steep and rugged on either slope. The same ridge, extending
508 toward the south and southwest, forms a continuous line of high mountains, lying between the San Pedro and Santa Cruz valleys; the preferable route for crossing is probably that taken by Col. Cooke in 1846.

Page 18 of Geological Reports attached to Report of Boundary Survey.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk*,

By ———, *Deputy*.

509

MAP.

DEF'TS' EXHIBIT A⁴.

(Here follows diagram marked p. 509.)

(This map is a blue print so poorly printed that it is impossible to reproduce it.)

Al margen las estampillas correspondientes debidamente canceladas.

C. Juez de Distrito :

Plutarco Elias por si y en representacion de la Señora su madre y hermanos en el juicio de oposicion sobre denuncia de las demasias de los terrenos llamados "Agua Prieta, Lo del Gato, Lo de Tomas Romero, de Baltazar," &c., hecho por el Señor Camou hijo, ante Ud. respetuosamente expongo : que en once del actual se me notifico un auto del juzgado de su digno cargo en que me manda correr traslado de estas actuaciones para formalizar mi oposicion al denuncia del Señor Camou y que en cumplimiento de tal disposicion paso a hacer la formalizacion correspondiente.

Segun la escritura presentada por la parte del Señor Camou, aparece que el veinticinco de Julio de mil ochocientos sesentidos, los Señores Jose Juan, Jose Maria y Manuel Elias, con anuencia de la madre de estos, Doña Guadalupe Perez, vendieron con pacto de retroventa á los Señores Camou Hermanos treinta y dos sitios de tierra para cria de ganado mayor y Caballar, sitios en San Pedro, contenidos en los Ranchos de Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar y San Rafael del Valle, en jurisdiccion de Sta. Cruz, Fronteras, y una parte dentro de la linea americana en la suma de doce mil pesos y por el termino de tres años.

Como se ve, el Señor mi padre, Jose Juan, fue uno de los vendedores, pero en el tiempo que corrian los tres años para la retroventa, tuvo que emigrar de Ures, pues que siendo Prefecto, dejó aquella Ciudad, en vista de la aproximacion de las fuerzas invasores. Murió antes de que se cumpliera el contrato, y cumplido este, los Señores Camou siguieron en la posesion de los terrenos, sin que antes nos hubiese oído, ni á la Señora, mi Madre, ni tampoco á nosotros, sus hijos, de los que unos éramos menores y otros lo son todavia. He hecho mencion de lo anterior porque precisamente en la actualidad se ocupa nuestro apoderado en procurar la invalidacion de la escritura de venta, pues fuerza mayor impidió se salvaran los terrenos por la exhibicion del precio recibido de los Señores Camou Hermanos. En el termino probatorio comprobó que los terrenos en cuestion estan sub judice y que por lo mismo no procede el denuncia de las demasias que solo puede hacer en la parte que permite la ley el propietario legal. Por otra parte tenemos que denunciar las demasias una persona como el Señor Camou, hijo, que por si no tiene las caractéres que marca la ley para poderlo hacer. La escritura de sociedad que presenta el denunciante demuestra que es propietario de treinta y dos sitios de terreno, unicos que le fueron vendidos; pero el caso es que ya posee una considerable cantidad de terreno, y como la ley, al fijar un limite para la extension de terreno denunciabile, ha querido ovitar la reunion en pocas manos de la propiedad territorial, claro es que no debe ser admitido su denuncia, siendo de observar que así lo manda terminantemente la suprema

disposicion de 30 de Abril de 1861, en su parte final. Llegaria positivamente al absurdo que se considerase que el Señor Camou, hijo, pudiera denunciar las demasias, á que se refiere, pues siendo la mente de la ley la subdivision de la propiedad, nos encontraríamos que, poseyendo ya cincuenta mil cuatrocientas ochenta y cuatro hectaras, obtenia ademas otras setenta mil seiscientas siete, formando una propiedad de mas de veintiocho sitios, siendo asi que la ley solo quiero que en una sola mano se reunan dos mil quinientas hectaras y no mas.

511 He manifestado que la escritura en virtud de la que se poseen los terrenos va á ser invalidada ó al menos que asi se procura y que el Señor Camou no puedo denunciar las demasias porque asi se contraria el espíritu de la ley de baldios. Pues bien, esto no pasaria con nosotros puer, ademas de ser muchos hermanos, ya se ha formado una asociacion para el completo del denuncia. Podria decirse que el Señor Camou, hijo, como poseedor, tiene derecho á denunciar las demasias de los terrenos en cuestion. Hiego la cualidad de poseedor legal al Señor Camou, hijo, y me fundo en la propia escritura de Sociedad que tiene presentada. Se sabo que la posesion se gana lo menos en un año y un dia, y él posee los terrenos para si desde el veinte de Abril del presente año; con la circunstancia que sun hasta tal posesion es perfectamente viciosa, puesto que no consta la traslacion de dominio de los terrenos de Camou Hermanos á Camou hijo, por escritura publica, debidamente registrada y con las demas formalidades legales. Por todo lo expuesto, concluyo reduciendo mi oposicion á los siguientes puntos:

Derecho.—Unico. Los terrenos denunciados por el Señor Camou hijo, esten sub judico, por estar comprendidos en la escritura que le sirve de titulo, la cual se procura invalidar conforme á derecho.

De derecho.—Primero. La persona que es propietaria de una considerable extension de terreno, no puedo denunciar mas que dos mil quinientas hectaras de demasias.

Segundo. Siendo el espíritu de la ley de baldios que no se reuna en una sola mano una gran extension de propiedad raiz el denuncia de una persona de mas de veintiocho sitios no se debe admitir.

Tercero. El que se dice propietario de una finca debe probar su propiedad por medio de titulo revestido de las formalidades legales.

Cuarto. No se presume poseedor el que no ha adquirido la posesion en el termino de la ley.

Quinto. Solo el propietario y poseedor legales y reconocidos pueden hacer el denuncia de demasias.

En el curso del presente juicio haré el dearrollo de los puntos que dejo manifestados, entretanto.

A Vd., C. Juez, suplico me tenga como formalmente opuesto á la adjudicacion de las demasias denunciadas por el Señor Camou, h., lo cual es de justicia que protesto con lo necesario.

Guaymas, Noviembre quince de mil ochocientos ochenta.

P. ELIAS.

Lic., A. JAUREGUI.

Al margen las estampillas correspondientes debidamente canceladas.

C. Juez de Distrito :

Juan P. M. Camou, como representante acreditado del Señor Jose Camou, h., en autos con el Señor Plutarco Elias, por si y hermanos sobre oposicion al denuncia hecho por mi poderdante de demasias de los terrenos denominados Agua Prieta, Lo del Gato, Lo de Tomas Romero & su estado supuesto, ante Vd. en la via y forma mas procedente en derecho, digo: que su notoria justificacion se ha de servir declarar en un todo improcedente la demanda de los opositores y en estado condenarlos en costas, daños y perjuicios, por la muy notoria temeridad con que proceden. Asi es justicia por los fundamentos, que, aunque de una manera muy sucinta, paso á exponer. Es un hecho incontrovertible que los Señores Jose Juan, Jose Maria y Manuel Elias, y la Señora madre de estos, Doña Guadalupe Perez de Elias, vendieron, con el pacto de retro, á los Señores Camou Hermanos, treinta y dos sitios de tierra para cria de ganado mayor y caballar situados en San Pedro, jurisdiccion de Santa Cruz, Fronteras, y contenidos en las estancias de Sta. Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltasar, Las Mesteñas y San Rafael del Valle, siendo precio de la venta la cantidad de doce mil pesos recibidos á satisfaccion de los vendedores. Es un hecho asi mismo incontrovertible que en la venta se estipuló: que la parte vendedora y sus herederos tenian el termino de tres años para redimir los terrenos mencionados, prebia devolucion á la compradora del precio recibido con sus intereses correspondientes, á la rason de uno por ciento mensual, los derechos de alcabala y escritura satisfechos por esta por la parte compradora. Tambien es un hecho fuera de toda duda que los Señores Camou Hermanos recibieron los titulos de las posesiones vendidas. Lo anteriormente expuesto consta por la escritura publica otorgada en la Ciudad de Ures á veinticinco de Julio de mil ochocientos sesenta y dos y que obra ya en autos del folio veintiuno al veintiocho.

Ahora bien, no habiendo los vendedores ni sus herederos, redimido los terrenos vendidos en el termino acordado, tres años, los Señores Camou Hermanos adquirieron, ipso facto, un derecho de dominio irrevocable en la cosa vendida. Asi le determina nuestra legislacion comun. Ni obsta en contrario la alegacion que hoy vienen haciendo los opositores, aseverando que el Señor Don Jose Juan Elias emigré de la ciudad de Ures á consecuencia de la aproximacion de fuerses invasores y que por lo mismo y en virtud de fuerza mayor, no corrió el termino para la redencion, asegurandose que salió de la precitada Ciudad de Ures y murió sin que expirase el termino de tres años convenido para la redencion. He dicho que no obsta tal alegacion porque una y otra especies son absolutamente falsas. El Señor Don Jose Juan Elias salió de la ciudad de Ures, Capital del Estado en la epoca á que me refiero, el dia treinta y uno de Julio de mil ochocientos sesenta y cinco: el termino prefinido en la venta con el pacto de retro expiró el veinticinco del mismo mas y año: el cinco de Noviembre fué herido en el arroyo de la Cananea, falleciendo á los tres dias en el Pueblo de Bacoachi; y ambos desgraciados acontecimientos tuvieron lugar en el año antes citado

de mil ochocientos sesenta y cinco. A mayor abundamiento debo dejar consignado en mi respuesta; que el Señor Juan P. Camou, socio principal de la extinguida sociedad "Camou Hermanos", promovió en el año de mil ochocientos sesenta y nueve, una informacion ante el juzgado que es hoy á su muy digno cargo, pidiendo en ella, entre otras cosas, que los Señores Jose Maria y Manuel Elias y la Señora Guadalupe Perez de Elias, madre de estos, y Bernardina Lucero de Elias, esposa que fué del finado Don Jose Juan Elias y madre del Señor Plutarco Elias, hoy demandantes, ratificaron la venta de los terrenos supradichos; y tal acto tuvo lugar con intervencion de la Promotoria fiscal de ese Juzgado, segun consta por las actuaciones originales que deben obrar en la oficina. Mas no es esta la ocasion oportuna para descender á reflexiones serias y en derecho procedente sobre los anteriores puntos; y esto en virtud de no ser la justicia federal la llamada á resolver sobre la validez ó nulidad de la escritura de venta, tantas veces mencionada. Si algo me he distraido en este respecto ha sido por seguir paso á paso, como lo haré, los muy temerarios razonamientos de la parte opositora; y porque entiendo ser de mi deber, no pasar desapercibidas especies, que no tienen razon de ser, debiendo contradecir tambien, como formal ente contradigo, la aser eracion bien temeraria de estar los terrenos cuestionados sub judice, como lo protesta demostrar

513 la parte contraria en el termino probatorio. Se dice; que mi representado carece de las condiciones que marca la ley sobre ocupacion y enagenacion de terrenos baldios, para denunciar las demasias comprendidas en los titulos y escritura de venta. Como fundamento se alega: que siendo poseedor ya de una considerable cantidad de terreno, está incapaz para adquirir mayor extension: pues de esta manera se barrenaria la disposicion de treinta de Abril de mil ochocientos sesenta y uno que trató de evitar la reunion en pocas manos de grandes extensiones territoriales. Por toda respuesta á la objeccion anterior, debo decir: que la disposicion citada ha sido derogada por la ley posterior de veinte y dos de Julio de mil ochocientos sesenta y tres, vigente en la materia. Que esto sea cierto, esto es, que exista tal derogacion, se comprueba con el parecer muy respetable del Señor Licenciado Jose Dias Leal, Jefe de la Seccion de Baldios en la Secretaria de Fomento, en su obra intitulada Legislacion y Guia de Terrenos Baldios, pagina doce. El Señor Camou, hijo, no es un extraño que viene denunciando baldios y por lo mismo no esta comprendido en la taxativa establecida en el articulo segundo de la ley de la materia. Es el poseedor de demasias de los ranchos antes referidos y en tal virtud está hábil para adquirirlas, sea cual fuese su extension; asi está determinado por la ley. La temeridad de los demandantos va lejos: Niegan al Señor Camou, hijo, la cualidad de poseedor legal de los terrenos vendidos con el pacto de retro y á los que he hecho referencia en el cuerpo del presente escrito. Dos son los apoyos ó fundamentos de tal negativo: 1.º.—Que mi poderdante no lo ha poseido un año y un dia; y 2.º.—Que la traslacion de dominio de Camou Hermanos á Jose Camou, hijo, no consta por escritura publica debidamente registrada y con las demas formalidades legales.

Aponas, C. Juez, merecen los honores de la discusion semejantes objeciones, y creo contestarlas muy satisfactoriamente con solo llamar la atencion sobre el contenido en lo conducente de la escritura de venta de los terrenos y de la disolucion de la Sociedad Camou Hermanos, que corren agregadas á los presentes autos. En efecto, es una verdad innegable que el Señor Jose Camou, hijo, figuró como socio de la extinguida compañía Camou Hermanos, hasta el veinte de Abril del corriente año: es tambien una verdad innegable que Camou Hermanos poseyaron por mas de un año y un día los terrenos que hoy se cuestionan. Si pues mi representado adquirió en propiedad los tantas veces referidos terrenos en virtud de la asignacion que se lo hizo por su representacion que como socio tenia en la compañía. Como negarle hoy su carácter legal de poseedor y propietario? Al hacerse la disolucion de la compañía, surgió la duda sobre si se causaba ó no el impuesto decretado por el Estado con las asignaciones hechas á los socios que de ella se separaban. Tal duda fué elevada en consulta al C. Gobernador y este alto funcionario, con la justificacion que le es característica, dió una resolucion en sentido negativo, como puedo leerse al final de la copia de la escritura que tengo presentada. Allí mismo se verá que de ella se tomó razon. Ademas si los Señores Camou Hermanos no poseyeron por mas de un año y un día las mencionadas demasias, si tal posesion no la tiene mi poderdante, quienes son sus poseedores? Acaso los adversarios? Por mas que he estudiado el escrito de demanda no encuentro aducida una sola razon legal en tal sentido.

Parece que la contra parte entiende que los Señores Elias solo vendieron treinta y dos sitios de tierra y no sus demasias y por lo mismo creen con algun derecho sobre ellas. Mas tal creencia
514 es verdaderamente erronea. Si en la precitada escritura de venta, se hizo solo mencion de treinta y dos sitios, fué porque estos aparecian amparados por los titulos de que hicieron entrega y que en debida forma acompaño, constantes de cuarenta y cuatro fojas útiles. Para la debida ilustracion del juzgado debo hacer conatar que los titulos adjuntos so refieren unicamente á los terrenos nombrados Naidenibacachi, Agua Prieta y Sta. Barbara, que se camponen de diez y ocho sitios doce y media caballerias, y á los de Agua de Baltazar, Lo del Gato, Lo de Tomas Romero y la de las Mestefias, de diez y un tercio y tres y un quinto caballeria, no figurando por ahora los de San Rafael del Valle, por no haber sobre ellos cuestion alguna, y si sobre las demasias de aquellos.

Por otra parte no consta por la escritura de venta que los vendedores se hubieran reservado derecho alguno sobre las precitadas demasias: ni podia existir tal reserva, supuesto que en la epoca de su otorgamiento estas pertenecian á la federacion; y no fué sino hasta el veintidos de Julio de mil ochocientos sesenta y tres, cuando el Presidente de la Republica, competentemente autorizado, concedió á los poseedores, y por gracia, la facultad de denunciarlas, en la extension que tuviesen mediante cierta remuneracion. Ademas, Cual es la accion instaurada por la parte contraria en el presente juicio de oposicion? No se designa, ni se colije del contexto de su escrito, pero aun cuando esto no fuese asi, entiendo que en el pre-

sente caso, no puedo haber efecto suspensivo en la secuela del juicio de denuncia de mi representado. Por las consideraciones expuestas.

A Ud. pido se sirva dar por contestado la presente demanda, y en estado fallar en el sentido que solicité al principio del presente escrito.

Protesto no proceder. Guaymas, Noviembre siete de mil ochocientos ochenta.

J. P. M. CAMOU.
Lic., JESUS M. GAXIOLA.

Guaymas, Junio seis de mil ochocientos ochenta y siete. Visto el presente juicio de oposicion promovido por el Ciudadano Plutarcio Elias, por si y como apoderado de sus hermanos mayores, Rafael y Alejandro Elias, y de su Señora Madre, Doña Bernardina Lucero de Elias, quien tiene la patria potestad de sus hijos menores, Maria de Jesus, Maria Dolores, Carlos y Manuel Elias, contra el denuncia de las demasias de los terrenos nombrados Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, Lo de las Mesteñas, situados en el Distrito de Arizpe, hecho por su propietario, Jose Camou. Visto lo expuesto por el actor en su escrito de denuncia y contestacion del demandado, lo pedido por el Promotor Fiscal, las pruebas rendidas por las partes; los ultimos alegatos, los varios incidentes que han surgido en este juicio adversos á los solicitantes, la citacion para definitiva y todo lo demas que denutos consta y ver convino.

Resultando: Que en veinticinco de Junio de mil ochocientos sesenta y dos, los ciudadanos Jose Juan, Jose Maria y Manuel Elias y su Señora Madre, Doña Guadalupe Perez de Elias, otorgaron en la Ciudad de Ures y ante el Juez de Primera Instancia de aquel Distrito, Ygnacio Lopez, una escritura de retroventa de los ranchos ya mencionados y que miden todos ellos treinta y dos sitios de tierra para cria de ganado mayor y caballada, á favor de los Señores
515 Camou Hermanos por la cantidad de doce mil pesos, y con plaso de tres años contados desde esa fecha.

Resultando: Que los Señores Camou Hermanos pidieron ante ese mismo Juzgado en dies y siete de Marso de mil ochocientos sesenta y nueve, la ratificacion de la retroventa, que se hace referencia, habiendola verificado el ciudadano Jose Maria Elias, por si y en representacion de su madre, Doña Guadalupe Peres, y su hermano, Manuel Elias, como tambien la Señora Bernardina Lucero, ya viuda por haber muerto su esposo, Don Jose Juan, el ocho de Noviembre de mil ochocientos sesenta y cinco, fecha en que ya era vencido el termino de la retroventa.

Resultando: Que habiendose disuelto la compañía, conocida en este Estado bajo la razon social de Camou Hermanos el veinte de Abril de 1880, en una de sus clausulas, la cuarta, expresa que el socio gerente, Ciudadano Jose Camou, hijo, por su representacion en dicha compañía, se adjudicaba, entre otras cosas, los terrenos de que ya se ha hecho mencion y cuyas demasias es el objeto de este juicio.

Resultando: Que el C. Jose Camou, hijo, como propietario de esos terrenos denunció sus demasias ante este Juzgado de Distrito el veintidos de Abril de mil ochocientos ochenta, y admitido el treinta y uno de Mayo del mismo año, habiendose opuesto á ese denunció el C. Plutarco Elias el treinta de Junio del mismo año y en Octubre trece so lo previno que justificara la perseneria como representante de sus menores hermanos, á que se refiere su escrito de oposicion, y presentado que fué el poder general otorgado por la Señora Bernardina Lucero por si y á nombre de sus menores hijos, Jesus, Dolores, Carlos y Manuel Elias, Rafael y Alejandro Elias, mayores de edad, á su favor on Octubre veinte se mandó que formalizase su oposicion dentro del termino de tres dias y hasta el quince de Noviembre del mismo año fué quando presentó su escrito formalizando dicha oposicion; siguiendo el juicio su curso regular, lo que fué interrumpido por las varias excepciones dilatorias y recursos improcedentes interpuestos por el actor, lo que ha dado lugar a que no se haya pedido concluir este juicio en cerca de siste años que tuvo principio con perjuicio en grave manera á los intereses del fisco.

Considerando: Que al vendor los herederus do Don Rafael Elias seas propiedades, con el pacto de retrovendendo, cuya venta se ha consumado por no haber side redimida en tiempo oportuno lo has hecho sin reserva alguna con todos los derechos que tenian sobre esos mismos terrenos, traspasandolos á los Señores Camou Hermanos y que hoy pertenecen al ciudadano Jose Camou, h.

Considerando: Que conforme á la ley vigente de baldios de veinte de Julio de mil ochocientos sesenta y tres, artículos 5° y 8°, indudablemente el propietario de un terreno tiene el derecho y aun preferencia á las demasias que pudiera tener esa propiedad denunciada en tiempo oportuno y sin que otra persona lo haya hecho anteriormente.

Considerando: Que los opositores segun los antecedentes y constancias que existen en este juzgado de Distrito tienen ya denunciadas treinta y tres mil, ochocientos cincuenta y echo hectaras, ochenta y siete aras, ochenta y una centiara, 33,858 hectaras, 87 aras, 81 centiaras, de terreno en este Estado de la manera siguiente: ya tituladas diez mil hectaras, 10,000 hectares, en un terreno contiguo á los Señores Cirilo Rochin y Urbano Borquez, en el propio Distrito: 6,000 hectaras, seis mil hectaras en un terreno nombrado El Looncito, en el mismo Distrito, cuyos titulos aun no han satisfecho, siete mil setenta y siete hectaras, nueve aras, ochenta y una centiaras, 7,077 hectaras, 09 aras, 81 centiaras, como tercera parte adjudicada de 21,213 hectaras, 29 aras, 44 centiaras, veintium mil doscientas trece hectaras, veintinueve aras, 516 cuarenta y cuatro centiaras en las demasias de San Pedro, tambien del mismo Distrito, y 10,781 hectaras, 78 aras diez mil, setecientas ochenta y una hectaras setenta y siete centiaras, como tercera parte de treinta y dos mil, trescientas cuarenta y cinco hectaras, treinta y cuatró aras, 32,345 hectaras, 34 aras, como demasias denunciados en San Jose de la Cienega de Heredia, Distrito de Magdalena, y en consecuencia les corresponde á cada uno mas de dos mil quinientas hec-ras que por la ley de baldios de 20 de Julio de 1863, artículo 2°, les es permitido obtener.

Considerando: Que conforme y segun las varias disposiciones de la Secretaria de Fomento y entre ellas la que ultimamente se ha recibido de fecha veintiseis de Febrero del presente año y que á la letra dice: "Dada cuenta al Presidente de la Republica con el oficio de Ud. fecha 17 del actual, en el que consulta si los denunciados de demasias de cualquiera extension que exceda de dos mil quinientas hectaras, estan en aptitud de denunciar y adquirir otro baldio de la misma extension, conforme al derecho que la ley concede para ello á todo habitante de la Republica, el mismo Supremo Magistrado ha tenido á bien acordar se diga á Ud. que el artículo 5º de la ley de 22 de Julio de 1863, da derecho á los poseedores de un baldio de cualquiera extension que sea para que se les adjudique en cuyo caso se comprenden las llamadas demasias en los predios de particulares; Pero que como esas demasias no son otra cosa sino terrenos sometidos para su adquisicion á las mismas prescripciones de la citada ley, se deduce que el que haya obtenido titula de las repetidas demasias por una extension de dos mil quinientas hectaras ó mas, no tiene accion á denunciar otro baldio, sino solo cuando la superficie adquirida sea menor de dos mil quinientas hectaras, pues entonces podra solicitar hasta el completo de la expresada extension, con fundamento del artículo 2º de la mencionada ley. Libertad y Constitucion. Mexico, Febrero 26 de 1867 (1887). P. O. D. S. M. Fernandez, O. M. Al Juez de Distrito del Estado de Sonora, Guaymas." Todos y cada uno de los opositores y herederos del Señor Don Jose Juan Elias ya no tienen accion á denunciar terrenos en la Republica, supuesto que en las demasias que lo han hecho han excidido de las dos mil quinientas hectaras que como maximum fija la ley.

Considerando: Que los terrenos que se cuestionan en este juicio solo deben considerarse como demasias para su propietario y como tal los ha denunciado y para los extraños como los opositores es de tenerse como baldios y bajo este caracter ya estos no tienen derecho para admitirlos como denunciados, supuesto que ya han obtenido una superficie mayor que la que designa por la ley y por lo mismo estan incapaces de obtener mas terreno baldio en la Republica.

Teniendo en consideracion por ultimo las razones y fundamentos legales en que se apoya el demandado en su escrito de alegato de buena prueba, este Juzgado en vista de todo lo ya expuesto definitivamente juzgando resuelve:

1º. No ha lugar á lo solicitado por los opositores á que se les prefiera en el denuncia de las demasias de los ranchos llamados Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero y Lo de las Mesteñas, situadas en el Distrito de Arizpe, hecho por su propietario Ciudadano Jose Camou, hijo, en consecuencia se proseguirá este denuncia por todos sus tramites hasta que se obtenga el titulo respectivo.

2º. Se condena á los promoventes opositores á las costas de este juicio.

3º. Notifiquese. El Juez de Distrito así lo decretó y firmó por ante mí. Doy fe.

Lic., JOSE MONTEVERDE.

RAMON MARTINEZ, *Secretario.*

Es copia fiel y exacta de las constancias que obran en el expediente original que obra en el archivo de este Juzgado de Distrito. Va confrontada y cancelados los timbres respectivos y que se expide en cumplimiento de lo mandado por auto de veintidos de Febrero del corriente año dictado en el expediente promovido en solicitud de dichas copias por el Procurador de los Estados Unidos de America para la corte de terrenos. Lo que certifico como Secretario interino del Juzgado de Distrito en el Estado de Sonora, á ocho de Mayo de mil ochocientos noventinueve.

GUILLERMO P. COTA. [RUBRICA.]

(Form No. 88.)

Form for Authentication of Signature.

CONSULAR AGENCY OF THE UNITED STATES.

May 9th, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mex., do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge for the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mex., this day and year next above written, and of the Independence of the United States the 123rd.

(Signed)
[SEAL.]

FRANK M. CROCKER,
Consular Agent.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk*,
By ———, *Deputy*.

518 DEFENDANTS' EXHIBIT H 1.

(*Translation of Exhibit H.*)

On the margin the corresponding stamps duly canceled.

Citizen district judge:

Plutarco Elias, for himself and in representation of his mother and brothers, in the adverse suit on the denouncement of the overplus (denurias) of the lands called "Agua Prieta, Lo del Gato, Lo de Tomas Romero, de Baltazar, etc.," made by Mr. Camou, Son, respectfully state to you:

That on the 11th inst. I was notified of an order of the court under your worthy charge in which it was ordered that these proceedings be referred to me for me to formulate my opposition to the denouncement of Mr. Camou, and in compliance with said order I proceed to make the corresponding formulation.

According to the deed presented on the part of Mr. Camou, it ap-

pears that on the 25th of July, 1862, Messrs. Jose Juan, Jose Maria and Manuel Elias, with the consent of their mother, Mrs. Guadalupe Perez, sold to the Messrs. Camou Brothers, with a stipulation of retrovendition, thirty-two sitios of land for raising large stock and horses located at San Pedro, contained in the ranches of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Baltazar and San Rafael del Valle, in the jurisdiction of Santa Cruz, Fronteras, and a part within the American line for the sum of twelve thousand dollars, and for the term of three years.

As is seen, my father, Jose Juan, was one of the vendors, but during the time the three years for the retrovendition were running he had to emigrate from Ures, for, being prefect, he left that city in view of the approach of the invading forces. He died before the contract expired and after it had expired the Messrs. Camou continued in possession of the lands, without our first being heard, either our mother or ourselves, her sons, some of whom were minors and others still are. I have made mention of the foregoing, because our attorney is now occupied in trying to obtain the invalidation of the deed of sale, for unexpected obstacles prevented the lands from being saved by the offer of the price received from the Messrs. Camou Brothers. At the time of making proof I shall prove that the lands in question are *sub judice* and that therefore the denouncement of the overplus (demasias) is not admissible, which the lawful owner can make only to the extent the law allows. On the other hand we have a person like Mr. Camou, Son, denouncing overplus (demasias), who in himself does not possess the qualifications prescribed by the law to enable him to do so. The partnership agreement presented by the denouncer shows that he is the owner of thirty-two sitios of land, the only ones that were sold to him; but the case is that he already owns a considerable amount of land, but as the law, when it fixed a limit to the extent of land denounceable, has intended to avoid the aggregation of landed property in a few hands, it is clear that his denouncement should not be admitted, it being observed that the supreme disposition of April 30, 1861, expressly so orders in its final part. It would positively become an absurdity to consider that Mr. Camou, Son, could denounce the overplus referred to, for, the intent of the law being the subdivision of property, we would find that, although he already owned 50,484 hectares, he
 519 would obtain besides other 70,606, forming a property of more than 28 sitios, the law being that only 2,500 hectares should be aggregated into a single hand, and no more.

I have stated that the deed in virtue of which the lands are held is going to be invalidated or at least an effort will be so made and that Mr. Camou cannot denounce the overplus (demasias) because such would be contrary to the spirit of the law on vacant lands. This, however, is not the case with us, for, besides being many brothers, a partnership has already been formed for the perfection of the denouncement. It might be said to me that Mr. Camou, Son, has the right to denounce the overplus (demasias) of the lands in question, as the possessor thereof. I deny the qualification of lawful possessor in Mr. Camou, Son, and I stand upon the partnership agree-

ment he has presented. It is known that possession is acquired at least in a year and a day, and he is in possession of the lands for himself since the 20th of April of the present year, with the circumstance that even such possession is perfectly vicious, as there is no evidence of the transfer of dominion of the lands from Camou Brothers to Camou, Son, by a public document, duly registered and with other legal formalities. In view of all of what has been stated, I conclude reducing my opposition to the following points:

Equity.—Only point. The lands denounced by Mr. Camou, Son, are *sub judice* because they are included in the deed which serves him as a title, which an effort will be made to invalidate under the law.

Law.—First. The person who is the owner of a considerable extent of land cannot denounce more than two thousand five hundred hectares of overplus (demasias). Second. It being the spirit of the law on vacant lands that a large extent of real property cannot be aggregated in a single hand, the denouncement by one person of more than 28 sitios ought not to be admitted. Third. He who calls himself the owner of an estate should prove his property by means of a title clothed with legal formalities. Fourth. He is not presumed to be a possessor who has not acquired possession in the terms of the law. Fifth. Only the lawful and recognized owner and possessor can make denouncement of the overplus (demasias).

In the course of the present suit I shall develop the points I have stated, meanwhile I pray you, citizen judge, to consider me as formally opposed to the adjudication of the overplus (demasias) denounced by Mr. Camou, Son, which is justice which I protest with whatever is necessary.

Guaymas, November 15, 1880.

P. ELIAS.

Licentiate, A. JAUREGUI.

On the margin the corresponding stamps duly canceled.

Citizen district judge:

I, Juan P. M. Camou, as the accredited representative of Mr. Jose Camou, Son, in the suit with Mr. Plutarco Elias for himself and brothers on the opposition to the denouncement made by my principal of the overplus (demasias) of the lands called Agua Prieta, Lo del Gato, Lo de Tomas Romero, etc., their condition being understood, before you, in the way and manner most conformable to law, state:

That, with your well-known sense of justice, you must declare wholly inadmissible the suit of the adverse claimants and at the proper time condemn them to costs, damages and losses, for the very notorious rashness with which they proceed. Such is justice for the reasons which, although in a very succinct manner, I proceed to state:

It is an incontrovertible fact that Messrs. Jose Juan, Jose Maria and Manuel Elias, and their mother, Mrs. Guadalupe Perez de Elias sold, with a stipulation of retrovendition, to Messrs. Camou Brothers

thirty-two sitios of land for raising large stock and horses, situated at San Pedro, jurisdiction of Santa Cruz, Fronteras, and contained in the ranches of Santa Barbara, Agua Prieta, Naidenibacachi, Agua del Gato, Las Mesteñas and San Rafael del Valle, the price of the sale being twelve thousand dollars, received to the satisfaction of the vendors. It is a fact likewise incontrovertible that it was stipulated in the sale: that the party selling and his heirs had the term of three years to redeem said lands, upon return to the purchaser of the amount received with its corresponding interest, at the rate of one per cent. per month, the excise and document taxes being paid by the party purchasing. It is also a fact placed beyond all doubt that the Messrs. Camou Brothers received the titles of the possessions sold. The foregoing statement is set out in the public document executed in the city of Ures, on the 25th of July, 1862, and already appears in these proceedings, folio 21 to 28.

Now then, neither the vendors nor their heirs having redeemed the lands sold within the term agreed upon, three years, the Messrs. Camou Brothers acquired, *ipso facto*, an irrevocable right of dominion in the thing sold. Thus our ordinary legislation determines it. Nor does the allegation the adverse claimants are making today operate to the contrary, in the assertion that Mr. Jose Juan Elias emigrated from the city of Ures in consequence of the approach of invading forces and that therefore and in virtue of unexpected obstacles the term for redemption did not run, asserting that he left the aforesaid city of Ures and died without the term of three years agreed upon for the redemption having expired. I have said that such allegation is without effect, because both statements are absolutely false. Mr. Jose Juan Elias left the city of Ures, capital of the State, in the epoch to which I refer, on the 31st day of July, 1865; the term fixed in the sale, with the stipulation of retrovendition, expired on the 25th of said month and year; the 5th of November he was wounded on the Cananea creek, died on the third day in the town of Bacuachi and both unfortunate occurrences took place in the year before mentioned of 1865. Further, I must state in my reply: That Mr. Juan P. Camou, principal partner of the extinguished partnership, Camou Brothers, in the year 1869, brought about an investigation in the court which is today under your very worthy charge, asking therein, among other things, that the Messrs. Jose Maria and Manuel Elias and Mrs. Guadalupe Perez de Elias, their mother, and Bernardina Lucero de Elias, who was the wife of the late Jose Juan Elias and mother of Mr. Plutarco Elias, now the plaintiffs, ratify the sale of the above-mentioned lands, and this act took place with the intervention of the promotor fiscal of that court, as shown by the original proceedings which should be in the office. But this is not the proper occasion to descend to serious reflections proper in law on the foregoing points and this in virtue of the fact that it is not federal justice that is called upon to decide as to the validity or invalidity of a deed of sale, so many times mentioned.

If I have somewhat diverged in this respect, it has been in order to follow, step by step, as I shall do, the very rash reasoning of the adverse party, and because I understand it to be my duty not to

521 allow pass unnoticed statements that have no reason for existing, it being my duty to contradict also, as I formally contradict, the very rash assertion that the lands in question are *sub judice*, as the adverse party declares he will show at the time of making proof. It is said: That my principal lacks the conditions the law prescribes on the occupation and alienation of vacant lands, in order to denounce the overplus (*demasías*) included in the titles and deed of sale. As a reason it is alleged: That being already the possessor of a considerable amount of land, he is incapacitated from acquiring a greater extension, because, in this manner, the disposition of the 30th of April, 1861, which endeavored to prevent the aggregation of large areas of land in few hands, would be nullified. For full reply to the foregoing objection I must say: That the disposition referred to has been repealed by the subsequent law of July 22, 1863, in force in the matter. That this is true, that is, that there is such repeal is shown by the very respectable opinion of licentiate Jose Diaz Leal, chief of the section of vacant lands in the department of public works, in his book entitled *Legislation and Guide on Public Lands*, page 12. Mr. Camou, Son, is not an outsider who comes to denounce vacant lands and therefore not included in the limitation established in the second article of the law in the matter. He is the possessor of the overplus (*demasías*) of the ranches before referred to and in virtue thereof is qualified to acquire them, whatever be their extension. It is so determined by the law. The rashness of the plaintiffs goes very far: They deny to Mr. Camou, Son, the qualification of lawful possessor of the lands sold, with the stipulation of *révovendition*, and to which I have referred in the body of this document. The supports or bases of such negative are two: 1st. That my principal has not possessed it a year and a day, and 2nd. That the transfer of dominion from Camou Brothers to Jose Camou, Son, does not appear in a public document duly recorded and with the other legal formalities. Such objections scarcely merit the honors of discussion, citizen judge, and I believe them very satisfactorily answered by solely calling attention to the contents of the deed of sale in what relates thereto and of the dissolution of the partnership, Camou Brothers, which are aggregated to the present proceedings. In fact, it is an undeniable truth that Mr. Jose Camou, Son, figured as a member of the extinguished company, Camou Brothers, until the 20th of April of the current year. It is also an undeniable truth that Camou Brothers possessed, for more than a year and a day, the land- which are today questioned. If then my principal acquired as property the so many times mentioned lands in virtue of the assignment that was made to him because of his representation which he had in the company as a member, how can he be denied today his lawful character as possessor and owner? When the dissolution of the company was made, the doubt arose as to whether or not there was liability for the tax decreed by the State on the assignments made to the members who retired from it. Such doubt was taken by way of consultation to the citizen governor and this high functionary, with the justification that is characteristic of him, gave a decision in a negative sense, as

can be read at the end of the copy of the deed which I have presented. It will be seen there also that note of it was taken. Besides, if the Messrs. Camou Brothers did not possess said overplus (demasias) for more than a year and a day, if my principal does not hold such possession, who are the possessors thereof? Possibly the adverse claimants. As much as I have studied the petition in the suit, I do not find a single legal reason adduced in that sense. It appears that the adverse party understands that the Messrs. Elias sold only thirty-

522 two sitios of land and not their overplus (demasias) and therefore believe that they have some right to them. But such belief is truly erroneous. If the aforesaid deed of sale made mention of only thirty-two sitios, it was because these appear covered by the titles which they delivered and which in due form I enclose on forty-four written leaves. For the due information of the court I ought to set out that the subjoined titles refer only to the lands called: Naidenibacachi, Agua Prieta, and Santa Barbara, which are composed of eighteen sitios, twelve and a half caballerias, and to those of Agua de Baltazar, Lo del Gato, Lo de Tomas Romero and Lo de las Mesteñas, of ten and one-third and three and one-fifth caballerias, those of San Rafael del Valle not figuring for the present, as there is no question whatever with regard to them, and there is on the overplus of the former. On the other hand, it does not appear in the deed of sale that the vendors had reserved any right whatever with respect to the aforesaid overplus (demasias), nor could such reservation exist, inasmuch as at the time of its execution they belonged to the federation, and it was not till the 22nd of July, 1863, when the President of the Republic, competently authorized, conceded to the possessors and by way of grace the authority to denounce them to the extent they had for a certain remuneration. Besides, what is the action undertaken by the adverse party in the present adverse suit? It is not set out nor is it inferred from the context of his petition, but even when this were not so, I understand that, in the present case, it can have no suspensive effect in the course of the suit of the denouncement of my principal. For the considerations stated

I ask you to be pleased to consider the present suit answered and in condition for judgment in the sense I asked for at the beginning of the present petition. I protest that I do not proceed in bad faith.

Guaymas, November 7, 1880.

J. P. M. CAMOU.

Licentiate, JESUS M. GAXIOLA.

Guaymas, June 6, 1887.—Having examined the present adverse suit brought by citizen Plutarco Elias for himself and as the attorney of his older brothers, Rafael and Alejandro Elias, and of his mother, Mrs. Bernardina Lucero de Elias, whose has parental control of her minor children, Maria de Jesus, Maria Dolores, Carlos and Manuel Elias, against the denouncement of the overplus (demasias) of the lands called: Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, Lo

de las Mesteñas, situated in the district of Arispe, made by their owner, Mr. Jose Camou;

Having examined the statement of the plaintiff in his petition in the suit, and the reply of the defendant, the recommendation of the promotor fiscal, the proofs rendered by the parties, the last allegations, the various incidents that have arisen in this suit adverse to the petitioners, the summons for final sentence and all else set out in the proceedings and proper to examine.

Resulting: That, on the 25th of June, 1862, citizen-Jose Juan, Jose Maria and Manuel Elias and their mother, Mrs. Guadalupe Perez de Elias, executed in the city of Ures and before the judge of first instance of the district, Ignacio Lopez, a deed for the retrovendition of the ranches already mentioned and which measure all together thirty-two sitios for raising large stock and horses, in favor —

the Messrs. Camou Brothers for the sum of twelve thousand
523 dollars, and for the term of three years counted from that date.

Resulting: That the Messrs. Camou Brothers, before the same court, on the 17th of March, 1869, asked for the ratification of the retrovendition to which reference is made, it having been made by citizen Jose Maria Elias for himself and in the representation of his mother, Mrs. Guadalupe Perez, and his brother, Manuel Elias, as also in that of Mrs. Bernardina Lucero then a widow, as her husband, Mr. Jose Juan, had died the 8th of November, 1865, date on which the term of the retrovendition had already expired.

Resulting: That the company known in this State under the firm name of Camou Brothers, had been dissolved the 20th of April, 1880, in one of its clauses, the fourth, it states that the managing partner, citizen Jose Camou, Son, for his representation in said company, has adjudicated to him, among other things, the lands of which mention has already been made, and the overplus of which are the object of this suit.

Resulting: That citizen Jose Camou, Son, as the owner of those lands, denounced their overplus (demasias) before this district court on the 22nd of April, 1880, and admitted on the 31st of May of the same year, citizen Plutarco Elias having opposed that denouncement the 30th of June of the same year, and on the 13th of October he was instructed to show his authority as the representative of his minor brothers, to which his petition in opposition refers, and when the general power of attorney was shown as executed by Mrs. Bernardina Lucero for herself and in the name of her minor children, Jesus, Dolores, Carlos, and Manuel Elias, and Rafael and Alejandro Elias, of lawful age, in his favor on October 20th, he was ordered to formulate his opposition, within the term of three days and not till the 15th of November of said year did he present his petition formulating said opposition, the suit following in regular course, which was interrupted by the various exceptions in delay and inadmissible recourses interposed by the plaintiff, which has been the cause of not being possible to conclude this suit in nearly seven years since it started, to the prejudice, in a serious manner, to the interests of the treasury.

Considering: That when the heirs of Mr. Rafael Elias sold those

properties with the stipulation of retrovendition, which sale has been consummated because it has not been redeemed within the proper time, they have made it without any reservation whatever with all the rights they had to those same lands, transferring them to Messrs. Camou Brothers and which today belong to citizen Jose Camou, Son.

Considering: That, under the existing law on vacant lands of the 20th of July, 1863, articles 5th and 8th, the owner of a tract of land undoubtedly has the right and even the preference to the overplus that property may have when denounced in proper time and when no other person has made it before.

Considering: That the adverse claimants, according to the antecedents and evidence that exists in this district court, have already denounced thirty-three thousand eight hundred and fifty-eight hectares, eighty-seven ares and eighty-one centiares, 33,858 hectares, 87 ares and 81 centiares, of land in this State in the following manner: Already covered by title 10,000 hectares adjoining Mr. Cirilo Rochin and Urbano Borquez in the same district; 6,000 hectares, six thousand hectares, in a tract called El Leoneito in said district, for which titles they have not yet paid, being seven thousand and seventy-seven hectares, nine ares and eighty-one centiares, 7,077 hectares, 09 ares and eighty-one centiares, adjudicated as the third part of 21,213 hectares, 29 ares and 44 centiares, twenty-one thousand two hundred and thirteen hectares, twenty-nine ares and forty-four centiares, in the overplus (demasias) of San Pedro, also in the same district, and 10,781 hectares, 78 ares, ten thousand seven hundred and eighty-one hectares and seventy-eight ares, as the third part of thirty-two thousand three hundred and forty-five hectares thirty-four ares, 32,345 hectares and 34 ares, as the overplus (demasias) denounced in San Jose de la Cienega de Heredia, district of Magdalena, and in consequence there corresponds to each one more than two thousand five hundred hectares which they are allowed to obtain under the law on vacant lands of July 20, 1863, article 2.

Considering: That in conformity and accordance with the various provisions of the department of public works and among them that recently received dated February 26, of the present year and which literally says:

"Report having been made to the President of the Republic with your communication dated the 17th instant, in which you consult as to whether the denouncers of overplus (demasias) of whatever extent that exceeds two thousand five hundred hectares, are in aptitude to denounce and acquire other vacant land (baldio) to the same extent, under the right which the law gives to every inhabitant of the Republic therefor, the supreme magistrate has been pleased to direct that it be stated to you that article 5 of the law of July 22, 1863, gives the right to the possessor of a tract of vacant land (baldio) of whatever extent it may be to have them adjudicated

provisions of said law, it is deduced that he who has obtained title to said overplus (demasias) to an extent of two thousand five hundred hectares or more has no right to denounce another tract of vacant land (baldio), except only when the area acquired is less than two thousand five hundred hectares, for he can then petition for the completion of said amount under article 2 of said law.

Liberty and constitution.

Mexico, February 26, 1887.

By order of the secretary:

M. FERNANDEZ,
Chief Clerk.

To the district judge in Sonora, Guaymas."

All and each one of the opponents and heirs of Mr. Jose Juan Elias now have no right to denounce lands in the Republic, since in the overplus in which they have done so they have exceeded the two thousand five hundred hectares which the law fixes as a maximum.

Considering: That the lands that are questioned in this suit should be considered only as overplus (demasias) for their owner and for outsiders such as the opponents they must be considered as vacant lands (baldio) and under this character these have no right to be admitted as denouncers since they have already obtained an area greater than that designated by the law and for the same reason are incapacitated from obtaining more vacant land (baldio) in the Republic.

Taking into consideration finally the reasons and legal grounds in which the defendant supports his answer alleging good proof, this court, in view of all that has now been stated, definitively judging, decides:

1st. The petition of the opponents to be preferred in the denouncement of the overplus (demasias) of the ranches called Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gate, Lo de Tomas Romero, and Lo de las Mesteñas, situated in the district of Arispe, made by their owner, citizen Jose Camou, Son, is not admitted, and in consequence this denouncement will be continued through all its proceedings until the respective title is obtained.

525 2nd. The opposing litigants are condemned in the costs of this suit.

3rd. Let them be notified. The district judge so decreed and signed it before me. I attest.

Licentiate, JOSE MONTEVERDE.
RAMON MARTINEZ, *Secretary.*

(Form No. 88.)

*Form for the Authentication of Signature.*CONSULAR AGENCY OF THE UNITED STATES,
May 9th, 1899.

I, Frank M. Crocker, consular agent of the United States at Guaymas, Mex., do hereby certify that the signature of Guillermo P. Cota, secretary to F. R. Nieto, federal judge of the State of Sonora, at the foot of the paper hereto annexed, is his true and genuine signature, and that the said Guillermo P. Cota is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the consular agency at Guaymas, Mex., this day and year next above written, and of the Independence of the United States the 123rd.

(Signed)
[SEAL.]FRANK M. CROCKER,
U. S. Consular Agent.

Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk*,
By ———, *Deputy*.

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MAP.

DEFENDANT'S EXHIBIT I.

(Here follows map marked page 526.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

527

DEFENDANTS' EXHIBIT J.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF THE U. S. SURVEYOR GENERAL,
TUCSON, ARIZONA, *July 31, 1880.*

Received of John Wasson, U. S. surveyor general for Arizona, the following-described documents, in accordance with a written request of date Hermosillo, July 10, 1880, by Pascual Camou, to wit:

1. Certified copy of title to the Mexican grants of land known as "Naydenibacachi," "Agua Prieta" and "Santa Barbara."

2. Certified copies of entry on Toma de Razon in cases of ranchos "Agua de Baltazar" and "Naydenibacachi." In all three documents.

D. VELASCO.

Also received a translation of title paper in the case of the rancho of "Naydenibacachi."

D. VELASCO.

528

HERMOSILLO, *Julio 15 de 1880.*

Sr. Dn. Juan Wasson, Tucson.

MI ESTIMADO AMIGO: Anteanoche llegué á esta ciudad, dejando concluidas las medidas que fuí á hacer en la frontera.

Por fin, ningun terreno hubo en territorio Americano como creíamos, y todo (lo de los dos títulos) está en Sonora; por lo que, no tiene ya caso el reconocimiento de estos títulos por el gobierno de ese país, y puede Ud. entregar á Dn. Demetrio Velasco la copia en ingles que le dejé del Naidenibacachi.

Por esta diligencia de Moreno, y recomendado al Sr. Velasco, remito á Ud. el libro que tuvo la bondad de prestarme, dandole un millon de gracias; pues me fué muy útil.

Su spre. afino. amigo y S. S.

PASCUAL CAMOU.

OFFICE OF THE U. S. SURVEYOR GENERAL,
TUCSON, ARIZONA, *May 13, '99.*

I, George Christ, U. S. surveyor general for Arizona, do hereby certify that the above and foregoing is a full, true, and correct copy of a certain paper and a certain other paper attached thereto as the same exist in the files of the Naidenibacachi, Agua Prieta, and Santa Barbara private land claims in this office.

(Signed)

GEORGE CHRIST,

[SEAL.]

U. S. Surveyor General.

[Endorsed:] C. 5. Defendants' Ex. "J" (Agua Prieta).

529 *Defendants' Translation of the Testimonio of the Title.*

Title to the garnt of eighteen sitios, twelve and one-half caballerias of land for breeding cattle and horses which are comprised in the places called Naydenibáachi, Agua Prieta and Santa Bárbara, situate in the jurisdiction of the presidio of Fronteras, issued by the treasury general of the department of Sonora, in favor of citizens Juan, Rafael and Ignacio Elias, residents of this place.

José Maria Mendoza, treasurer general of the department of Sonora:

Whereas article 11 of the sovereign decree, No. 70, of the general congress, dated August 4th, 1824, cedes to the States the revenues which it did not reserve to itself by said law, and one of them being that from the lands in their respective districts, which consequently belong to them, and for the sale of which the honorable Congress of what was the united State of Sonora and Sinaloa enacted law, No. 30, of the 20th of May, 1825, as also did the successive legislatures other decrees relating thereto, which provisions have been re-enacted in sections 3, 4, 5, 6 and 7, of chapter 9 of the organic law of the treasury, No. 26, of July 11th, 1834, and whereas citizens Juan, Rafael

and Ignacio Elias Gonzalez have appeared before this treasury general, on the 21st of July, 1831, with a written application registering the waters and lands of Santa Bárbara, Naidenibáachi, Agua Prieta and Cabuyona, this office of the treasury, by an order of the 12th of August of the same year, ordered a report made as to whether the applicants possess the amount of live stock they state, whether the sitios they hold at San Pedro and Cienega de Heredia are not really sufficient to maintain said stock, whether therefore they have real need for said sitios, and whether they are beyond the line of presidios, the alcalde of this city made the report referred to and as the purport thereof agreed with the petition of the parties in interest, by an order of the 10th of October of said year, ample commission was given citizen Joaquin Vicente Elias, who discharged it as appears from the following communication, order and act of obedience:

To the treasurer general of the State:

Citizens Juan, Rafael and Ignacio Elias Gonzalez, appear before you by means of the present application and state that in the jurisdiction of the presidio of Santa Cruz they are raising cattle and sheep, the number of which they cannot now maintain on the sitios that belong to them, as is notorious and public, and that for this reason their stock is scattered to the four points of the compass, but more particularly to the waters of Santa Bárbara, Naidenibáachi, Agua Prieta and Cabuyona, from which we suffer incalculable damages, because, since they are public lands, whoever wishes enters them freely, gathers and runs off stock and because of this condition of doing as one pleases without our consent or permission

531 being necessary, the consequences are outrageous robbery and that the cattle are driven further and further away and in

order to obviate such damages and that our breeding lands may be sufficient for the number of cattle we now have and which ought soon to be increased, notwithstanding the continued damages the Indian enemies of war cause, we find ourselves in the case of making formal denouncement, as we hereby do, of the land that may be found to be public land within the points and waters mentioned, which are bounded on the north by the Chiricahua mountains, on the south by the lands of the Sinaloas, on the east by the Cabuyona mountains and on the west by the lands of the Saus.

Therefore we petition and pray Your Excellency to be pleased, under the law of May 20th 1825 and the power given you by article 22 thereof, to admit the denouncement we make of said lands and to issue the corresponding order for the survey, appraisement, publications, sale and other proceedings necessary to be executed thereon until the issue of the title, and agree to pay the fees, costs and whatever is necessary, etc.

Arizpe, July 21st, 1831.

JUAN ELIAS GONZALEZ.
RAFAEL ELIAS.
IGNACIO ELIAS.

Hermosillo, October 10th, 1831.—Inasmuch as the foregoing report legally and sufficiently proves that citizens Juan, Rafael and Ignacio Elias Gonzalez have a considerable amount of live stock, for which are not sufficient the sitios they own at the points of San 532 Pedro and Cienega de Heredia, in the jurisdiction of the presidio of Santa Cruz, and, inasmuch as for this reason, the public lands they have denounced called Santa Bárbara, Naidenibácachi, Agua Prieta and Cabuyona, are absolutely necessary to them, confer ample formal commission upon citizen Joaquin Vicente Elias, a resident of San Ignacio, to proceed, without prejudice to a third party who represents a better right, with all the customary requirements, and after the citation of the owners of coterminous lands, to the survey of said public lands, and he will make the survey, appraisement, and publications in accordance with the provisions of the decree of the constituent Congress of what was the united State, No. 30, of the 20th of May, 1825, and of the regulations thereunder, as well as the provisions of decree, No. 175, of the 20th of November, 1830, and other existing rulings and regulations on the matter, and when said proceedings are completed he will forward the originals to this office of the treasury, and summon the parties in interest to attend, in person or by agent, at the sale of said lands to be made by the board of sales in this city.

The treasurer general of the State thus determined, ordered and signed with attending witnesses in default of a notary, there being none, according to law.

MENDOZA.

Witness:

IGNACIO ESCOBOSA.

Witness:

MARIANO ROMERO.

Having received the foregoing commission conferred upon me by the treasurer general for the survey of the lands which citizens Juan, Rafael and Ignacio Eliás Gonzalez have registered in
 533 the places known by the names of Santa Bárbara, Naidenibácachi, Agua Prieta and Cabuyona, and by virtue of the acceptance I thereof make, postpone it, therefore, until the danger from barbarous Indians ceases.

And in witness thereof I entered this minute, which I signed with those of my attendance according to law.

JOAQUIN V. ELIAS.

Witness :

BRIGIDO REYES.

Witness :

MIGUEL CAMPOY.

Under date of August 20th, 1835, the commissioner made an order to proceed to the survey of the lands mentioned since the barbarous enemies permitted it by having suspended their hostilities; he summoned the owners of coterminous lands and appointed his assistants, chainmen, tallymen and recorders, the citizens Juan Eufrazio de la Cruz, Juan Samaniego, Eugenio Moreno, Julian Sillas, Pedro Luque and Manuel Samaniego, to whom he formally administered the oath, under which they promised to discharge their duties faithfully and lawfully, and he then made the survey as appears from the following proceedings:

At the place of Agua Prieta, on the 28th day of the month of September, 1835, I, the judge commissioned to conduct these proceedings, for the purpose of commencing the survey, delivered to the appointed assistants a well-waxed cord and a vara for measuring, and caused them to measure and count fifty varas in my presence and that of those of my attendance, and when that was done I ordered its extremities tied to two wooden poles. It was delivered
 534 to the chainmen and having told said agent of the Messrs. Elias to point out the place they choose for center, he pointed it out in a lake which is in the middle of a valley which has the name of said place and covers its whole circumference. Then the course to the south was observed and along it they went scrupulously measuring and counting 59 cords, which terminated in a thicket of willows, which are in the middle of the valley, and which will serve as monuments until the parties construct them of lime and mortar, as is provided. Having returned to the center, the course to the north was observed and up the valley there were measured 100 cords, which terminated on a very small hillock (lomita) fronting on the east with what they call Saddle pass, having caused a pile of stones and a cross to be put there to mark the place for the monument. Having returned to the center the course to the east was taken and along it there were measured and counted 168 cords, which terminated on a high hillock (loma) which is to the right of the pass where the old road passes from Santa Cruz to San Bernardino, where I ordered a pile of stones and a cross put to mark the place for the monument. Having returned to the center the

course to the west was taken and along it there were measured and counted 240 cords, which terminated a little beyond where the mountain seen in this direction terminates, on a broad red hill (cerro) which has a brow on the south side and fronts on the west the highest part of the San José mountain, where I ordered a pile of stones and a cross put to mark the place for the monument, and night having now come on I ordered the survey suspended to continue it tomorrow, and in witness thereof I enter this minute
 535 which I signed with those of my attendance, according to law, as the other assistants did not know how, to which I certify.

JOAQUIN VICENTE ELIAS.

Witness :

JOSÉ PERFECTO FLOYAS.

Witness :

LEONARDO LUQUE.

At the place of Agua Prieta, on the 29th day of the month of September, 1835, I, the commissioned judge, for the purpose of continuing the course of these proceedings, proceeded with the appointed assistants to the place for the north monument and, having observed the course to the east, there were measured and counted along it 168 cords, which terminated near Saddle pass on a small hillock (loma), which is to the right and near two others that are higher, where I ordered a pile of stones and a cross put to mark the place for the monument. Having returned to the place for the north monument, from which the measurement started, and the course to the west having been observed, there were measured and counted along it 240 cords, which terminated on a small hill (cerro), which is in front of the cross monument in said direction, where another and a cross was caused to be placed; thence, observing the course to the south, there were measured and counted 89 cords, which terminated at the cross monument of the west course, and continuing in the direction of said south course there were measured 60 cords, which terminated at the foot of a high hill (cerro) facing on the south another hill that has a dark crest, and on the east a pass which, on the left, has two hills (cerros) and is made up of several red peaks, where I ordered a pile of stones and a cross put to mark the place for the monument.

536 Having observed the course to the east from this point, there were measured and counted 240 cords, which terminated at the south cross monument, in the thicket of willows, that have been mentioned before. From there there were estimated 178 cords, on the course to the east, to the foot (falda) of the first pass which is to the right of the point where the cross monument of said course came, both points being on a straight line at the foot (falda) of the Perillo mountains, and thence on a course to the north there were estimated 59 cords, which terminated at the east cross monument, the survey being in this manner concluded and containing in its area, the calculation having been made with absolute correctness, six and one-half short sitios. The party, who stated that he was satisfied with what had been done, was cau-

tioned to inform his parties in due time to have monuments of stone and mortar constructed, as is provided. And for the purpose of doing so, I entered this minute which I signed with those of my attendance, according to law, as the other assistants, who accompanied me, did not know how.

JOAQUIN V. ELIAS.

Witness :

JOSÉ PERFECTO FLOYAS.

Witness :

LEONARDO LUQUE.

The undersigned being at the place the agent of Messrs. Elias designated to him, for the purpose of proceeding to the survey of the lands of Santa Bárbara and Naidenibácachi, caused the said agent to designate the center point and having designated it midway between the two places mentioned, a little to the east, on a hill, the course to the north was observed and along it there were
537 measured and counted 165 cords which terminated a little beyond the water of Naidenibácachi, on a small hillock (lomita) which is to the north, fronting on the right three high hills (cerros) and one on the east and close by on the south an ash tree. Having returned to the center the course to the south was observed, and along it there were measured and counted 258 cords, which terminated at the point of a ridge, at a distance of three cords to the east, in the same line with the corner monument of the lands of the water of Baltazar, that of El Gato, etc., adjudicated to Don José Rafael Elias, his son Don José Juan and his wife Guadalupe Perez where I ordered a pile of stones and a cross put to mark the place for the monument. Having returned to the center the course to the west was observed and along it there were measured and counted 200 cords which terminated a little above the place of Santa Bárbara, on the other side of the arroyo on a white hill (cerro), which is near a peak on the north side and on the south in a straight line with Cerro de Magallanes, which is at a considerable distance, where I ordered a pile of stones and a cross put to mark the place for the monument. Having returned to the center the course to the east was observed and there were measured 63 cords, which terminated on the other side of a large flat on a small red hillock (lomita), which is close to a valley filled with juniper trees and fronting the Naidenibácachi range of mountains, and a white brow on the summit of said mountain. And the night of this day having now come on, I ordered the suspension of the survey I am making, to continue
538 it tomorrow, for the purpose of squaring it, and in witness thereof I entered this minute which I signed with those of my attendance, according to law, as those who accompanied me did not know how.

JOAQUIN V. ELIAS.

Witness :

JOSÉ PERFECTO FLOYAS.

Witness :

LEONARDO LUQUE.

At the center point of the lands which are being surveyed, on the 30th day of the month of September, 1835, the commissioner for the conduct of these proceedings, ordered that they be continued for the purpose of squaring the foregoing survey and to this end he proceeded to the place for the north monument and being there caused the course to the east to be observed and along it they went measuring and counting 53 cords which terminated in a large flat at the foot of a juniper tree, the only one in all the locality and fronting some hills (cerros) which have red crests, and in the same line with the west corner monument of the Agua Prieta, distant therefrom 33 cords to the south, where I ordered a pile of stone and a cross put to mark the place for the monument. Having returned to the north cross monument where this survey was begun, the course to the west was observed and along it there were measured and counted 113 cords which terminated on a transverse ridge covered with ocotillas, which is in front of a peak to the south, and to the north a flat covered with juniper trees, where I ordered a pile of stones and a cross put to mark the place for the monument. From this place the survey was made to the west and there were measured and counted 250 cords which terminated at the cross monument of this course. Observing the course to the south there were estimated to the

539 *to the slope of Mount Magallanes, to a hill (cerro) which is the west corner monument of the lands of the waters of El Gato, Baltazar, Tomas Romero, etc., surveyed for José Rafael Elias, his son José Juan and his wife Guadalupe Perez.* From said point the course to the east was observed and there were estimated 200 cords to the south cross monument; thence the survey was continued on the same course to the east and 73 cords having been measured they terminated at the first stopping place of the "compañeros," on a clean plateau fronting, on the north, the last thicket of cottonwoods, the largest one in the valley of Santa Bárbara on the arroyo "Huecos de Agua." Observing the course to the north, on account of the roughness of the ground, there were estimated to the east cross monument 258 cords which terminated at said monument and thence on the same course and for the reason also stated there were estimated 100 cords to the cross monument of the lands of Agua Prieta, this survey being thus completed and containing this last one, which constitutes the lands of Naidenibáachi and Santa Bárbara, an area of eleven and one-half sitios and twelve and one-half caballerías. In witness of all of which this minute is made which I signed with those of my attendance, according to law, the other assistants who accompanied me not signing because they did not know how, to which I certify.

JOAQUIN VICENTE ELIAS.

Witness:

JOSÉ PERFECTO FLOYAS.

Witness:

LEONARDO LUQUE.

540 Under date of October 1st the surveyor proceeded, with two intelligent experts of practical experience, who were citizens

José Maria Luque and Julian Sillas, to appraise the lands surveyed, who, after being formally sworn and well instructed, appraised the eighteen sitios, twelve and one-half caballerias of land in the sum of four hundred and thirty-two dollars, four reals, at which value he published them for thirty consecutive days in solicitation of bidders, from the 4th of June till the third of July of the current year. None appeared. He closed the expediente and by an order of the 7th of said month forwarded it to this office of the treasury, which, by an order of the 9th of September, referred it to the attorney general, who submitted the following opinion:

To the treasurer general:

This expediente, which has been forwarded for my consideration, as attorney general of the treasury, was ordered made by Your Excellency by virtue of an application presented to that treasury general on the 21st of July, 1831, by citizens Juan, Rafael and Ignacio Elias Gonzalez, residents of this place, in which they ask to have adjudicated to them the public lands to be found at the places called Santa Bárbara, Naidenibáachi, Agua Prieta and Cabuyona, north of the presidio of Fronteras, inasmuch as the sitios they occupy are not sufficient to maintain thereon the amount of live stock belonging to them. Wherefore, by decree of the 10th of October of said year Your Excellency was pleased to issue ample commission to citizen Joaquin

541 Vicente Elias, a resident of San Ignacio, and now secretary of the supreme government of the department, to proceed, with all the customary requirements, to the survey, appraisement, and publications of said lands for said Messrs. Elias. Therefore, the survey of said vacant public lands having been made there resulted in all of them eighteen sitios and twelve and one-half caballerias for breeding cattle and horses, which were valued and appraised in the following terms: the six and one-half sitios in the survey of Agua Prieta, one at sixty dollars because it has a small spring and the remaining five and one-half sitios at the rate of fifteen dollars, as they are absolutely dry, and the eleven and one-half sitios together with the twelve and one-half caballerias contained in the lands of Naidenibáachi and Santa Bárbara, one at eighty dollars, another at sixty dollars and the others at fifteen dollars, which amounts make a total of four hundred and thirty-two dollars, four reals.

He who replies states that, since the appraisements — were made by the experts appointed for the purpose fully conform to the organic law of the treasury, No. 26, of July 11, 1834, there is nothing to prevent the treasury from ordering that they be offered at public sale by the board of sales and that the corresponding title to the grant be issued to the parties in interest or to whomever makes the best bid. This is the opinion of the attorney general of the treasury, in the discharge of his duties. Your Excellency will, nevertheless, order what is best.

Arizpe, September 12, 1836.

PEDRO RODRIGUEZ.

542 This treasury general having approved the hereinbefore inserted opinion of the attorney general of the treasury, by an order of the 15th of September of the current year, ordered that the three public offers be proceeded with on said 15th, the 16th and the 17th, and no bidder having appeared, the eighteen sitios, twelve and one-half caballerias of land at the places called Santa Bárbara, Naidenibáachi, Agua Prieta and Cabuyona were sold to citizens Juan, Rafael and Ignacio Elias Gonzalez, as shown by the third offer which follows:

In the capital at Arizpe, on the 17th day of the month of September, 1836, assembled as a board of sales in the office of the treasury general of the department, the president and members who compose it, citizens, the treasurer José Justo Milla, the judge of first instance Julian Padilla, by operation of the law, and the attorney general Pedro Rodriguez, the third and last offer was proceeded with for the sale of the eighteen sitios, twelve and one-half caballerias of land contained in the places known under the names of Agua Prieta, Naidenibáachi, and Santa Bárbara, a publication being made in the same terms and with the same formalities as the two preceding ones, the announcement being made to the public three times that the sale must be made now, in which act appeared citizen Rafael Elias and offered for himself and in the name of his copartners and brothers, citizens Juan and Ignacio Elias Gonzalez, the said four hundred and thirty-two dollars and four reals, at which said lands were appraised, and the hour for midday prayer of this day

543 having already struck and no higher bidder having appeared, the public crier finally said, in a loud and clear voice:

"Once, twice, three times; sold, sold, sold; may it do good, good, good to the said Rafael, Juan and Ignacio Elias Gonzalez."

In these terms this act was concluded, the said eighteen sitios, twelve and one-half caballerias of land contained in said places of Agua Prieta, Naidenibáachi and Santa Bárbara, situate in the jurisdiction of the presidio of Fronteras, being publicly and solemnly sold to said parties in interest for the said sum of four hundred and thirty-two dollars and four reals, at which said lands were appraised, and in due witness thereof this minute was entered, which the president and members of this board of sales signed, together with said Rafael Elias.

MILLA.
PADILLA.
RODRIGUEZ.
RAFAEL ELIAS.

On the same day an order was made for the party in interest, Rafael Elias, to proceed, for himself and in the name of his other two partners, to pay into this office of the treasury the four hundred and thirty-two dollars and four reals, the value of the land, and having done so, the proper certificate to vouch for the same was issued and is of the following tenor:

I, José Maria Mendoza, treasurer general of the department of Sonora,

544 Certify: That at folio — of the manual book of the present fiscal year there is found entered an item of the following tenor:

December 23rd.—Charges for grants of lands, four hundred and thirty-two dollars, and four reals paid by citizen Rafael Elias for himself and in the name of his brothers, Juan and Ignacio Elias Gonzalez, the price at which were sold by the board of sales of this treasury, on the 17th of September last, eighteen sitios and twelve and one-half caballerias of land for breeding cattle and horses contained in the places called Agua Prieta, Naidenibácachi and Santa Bárbara, situate in the jurisdiction of the presidio of Fronteras, in the district of this capital, and for this payment the proper certificate which should vouch therefor, when aggregated to this original ex-diente, was issued to him... 432-40

MENDOZA.

RAFAEL ELIAS.

And in witness thereof, wherever necessary, I give the present certificate in Arizpe, on the 26th of December, 1836.

JOSÉ MARIA MENDOZA.

The original certificate being aggregated to the expediente in the matter, it was concluded with all the requirements and formalities established by the laws, and remains in the custody of the
545 archives of this treasury general as a perpetual testimony.

Therefore, in the exercise of the powers the laws give me, by these presents and in the name of the Republic of Mexico, I grant, in due form of law, eighteen sitios, twelve and one-half caballerias of land for breeding cattle and horses contained in the places called Agua Prieta, Naidenibácachi and Santa Bárbara, situate in the jurisdiction of the presidio of Fronteras, in this district of this capital, to citizens Juan, Rafael and Ignacio Elias Gonzalez, to their heirs and successors, to whom I grant, give and adjudicate said lands by way of sale, and with the qualities, firmness and subsistercy the laws establish, with all their entrances, exits, roads, customs, servitudes, timbers, woods, pastures, waters, springs, drinking places and all others thereunto belonging, with the precise qualification and express condition that they are to keep said lands stocked and protected, without their being unstocked, deserted or unprotected for any time, with the understanding that if their total abandonment should occur for the space of three consecutive years and there should be any person to denounce them, in that event, after proof of the fact, they shall be declared public lands and shall be adjudicated to the highest bidder, excepting, as is just, those cases where the lack of protection is due to the notorious invasion of enemies, and only for the time of such occurrences, cautioning, as they are strictly cautioned, said citizens Juan, Rafael and Ignacio Elias Gonzalez, and their children, heirs and successors, that

546 they must restrict and limit themselves to the metes and bounds specifically set out in the hereinbefore inserted proceedings of survey, and shall observe and strictly comply with article 63, chapter 9, of the organic law of the treasury, No. 26, of July 11, 1834, which impose upon them the obligation to maintain at their boundary termini monuments of stone and mortar under a penalty of twenty-five dollars, which will be exacted of them if they violate it, for the common funds, said monuments being constructed, in this case, by the proper judge, at the expense of the parties in interest, and I order and command the judges, justices and authorities who at present are and may hereafter be in the district of Arizpe, for the sake of good and prompt administration of justice and in compliance with the laws on the matter, not to permit the said parties in interest nor their heirs to be, in any manner, annoyed, disturbed or molested in the free use, exercise, right of property, dominion and possession of the said eighteen sitios, twelve and one-half caballerias of land contained in the places called Agua Prieta, Naidenibáachi, and Santa Bárbara, but rather they shall constantly watch and see, with the greatest vigilance and activity, that they are always protected and maintained in the quiet and peaceable possession to which they are entitled by right of law, so that, in this manner, they may freely sell, change, barter, donate, transfer, cede and alienate said lands, at their free will and election, as absolute owners and proprietors.

In which terms I have issued the present formal title of grant to citizens Juan, Rafael and Ignacio Elias Gonzalez, and to their 547 children, heirs and successors, and delivered it to them for their security, and having made toma de razon thereof in the proper book.

Given in the capital at Arizpe, on the 28th day of the month of December, 1836, authenticated and signed by me, and sealed with the seal of this treasury general, before the undersigned witnesses of my attendance, in default of a notary, there being none, according to law.

JOSÉ MARIA MENDOZA.

Witness:

JULIAN PADILLA.

Witness:

AGUSTIN SERRANO.

Toma de razon of this title is taken at folio 41 reverse of the corresponding book existing in the archives of this treasury general.

Official.

I, José Maria Mendoza, treasurer general of the department of Sonora,

Certify: That at folio — of the manual book of the current fiscal year there is found entered an item of the following tenor:

December 28th.—Charges for title to a grant, thirty dollars, paid by citizen Rafael Elias for himself and in the name of his brothers, Juan and Ignacio Elias Gonzalez, fee for the title to the grant issued to him on this day by this treasury general, for eighteen sitios, twelve and one-half caballerias of land for breeding cattle and horses contained in the places called Agua Prieta, 548 Naidenibacachi and Santa Bárbara, situate in the jurisdiction of the presidio of Fronteras, in the district of this capital 30-0-0

MENDOZA.

RAFAEL ELIAS.

And in witness thereof, wherever necessary, I give the present certificate, in Arizpe, on the 25th of December, 1836.

JOSE MARIA MENDOZA.

MEMORANDUM.—Of the fees incurred by citizen- Juan, Rafael and Ignacio Elias Gonzalez in the adjudication and issue of title for eighteen sitios, twelve and one-half caballerias of land contained in the places called Naidenibacachi, Agua Prieta and Santa Barbara, to wit:

For the cost of the land	432-4-0
For fees for the sale.....	6-0-0
For the attorney general.....	3-0-0
For the drum and public crier	2-0-0
For three sheets of paper of seal 3rd aggregated to the expediente.....	1-4-0
For the title to the grant	30-0-0
For one sheet of paper of seal 2nd and nine of seal 4th used in the title	2-0-0
Sum.....	477-0-6

JOSE MARIA MENDOZA.

(Case 5, F. 31.) Filed in the office of the clerk, court of private land claims, May 31, 1899.

JAS. H. REEDER, *Clerk*,By R. L. LONG, *Deputy*.

549 And be it further remembered that afterwards, to wit, on the 27th day of November, A. D. 1899, the same being the 53rd day of the January term, 1899, the court announced its decision; which decision is as follows, to wit:

SANTIAGO AINSA, Administrator, etc., }
vs. } No. 5. Agua Prieta Grant.
 UNITED STATES ET AL.

This cause having come on to be heard at a former session of this court, and having been submitted on full legal hearing and proof, and the court, upon consideration and examination of said cause,

being sufficiently advised in the premises, doth find that said petition for the confirmation of the private land claim known as and called the Agua Prieta grant, alleged to be situate in the county of Cochise, Territory of Arizona, and described as lying on both sides of what is known as the Sulphur Spring valley, between the Mule mountains on the west and the Swisshelm mountains on the east, and immediately north of the boundary line between Mexico and the United States of America, and more particularly described in plaintiff's petition and amended petition on file in this court, has not been sustained by satisfactory proof, and that the title so asserted to that tract of land alleged to have been petitioned for on July 21st, 1831, by Juan Rafael and Ignacio Elias Gonzales to the treasurer general of the State of Sonora, and title to which is alleged to have been issued on December 28th, 1836, to said three petitioners by Jose Maria Mendoza, treasurer general of the department of Sonora, is of no validity, and that the grant or concession so claimed is not such an one as the United States are bound to recognize and confirm by virtue of the treaties of cession by Mexico to the United States by the laws of nations or by the laws and ordinances of Spain and Mexico.

It is therefore ordered, adjudged, and decreed that the said claim to the said tract of land be, and the same is hereby, rejected and said petition dismissed.

(Minutes signed)

JOSEPH R. REED,

Chief Justice.

And be it further remembered that thereafter, to wit, on the 5th day of February, A. D. 1900, there was filed in the office of the clerk of said court an order allowing an appeal to the Supreme Court and a citation with an acknowledgment of service thereof; which order and citation are in the words and figures as follows:

550 In the United States Court of Private Land Claims, Sitting at Tucson, Arizona, January Session, 1899.

SANTIAGO AINSA, Trustee and Administrator of the Estate of Frank Ely, Deceased, Plaintiff and Appellant,

vs.

THE UNITED STATES ET AL.

} Case Number Five. Agua
Prieta Grant.

The above-named plaintiff, Santiago Ainsa, administrator of the estate of Frank Ely, deceased, and Edward Camou, made a party defendant herein, conceiving themselves aggrieved by the order and judgment entered on November 27, 1899, in the above-entitled cause, pray that they be allowed to appeal, and they do hereby appeal, from said order and judgment to the Supreme Court of the United States, and pray that this their appeal may be allowed, returnable sixty (60) days from the date thereof, and that a transcript of the record and proceedings and papers upon which said order and judgment

were made, duly authenticated, may be sent to the Supreme Court of the United States.

ROCHESTER FORD,

Attorney for Appellants.

Tucson, Arizona, January 25, 1900.

And now, to wit, on January 29, 1900, it is ordered that the appeal be allowed as prayed for.

JOSEPH R. REED,

Chief Justice Court of Private Land Claims.

Due and legal service of copy of the foregoing application for an appeal and allowance thereof is hereby acknowledged at Santa Fe, New Mexico, this 31st day of January, 1900.

MATT. G. REYNOLDS,

U. S. Attorney, Court of Private Land Claims.

Filed in the office of the clerk of the court of private land claims Feb. 5, 1900.

JAS. H. REEDER, *Clerk,*

By R. L. LONG, *Deputy.*

551 In the United States Court of Private Land Claims, Sitting at Tucson, Arizona, January Session, 1899.

SANTIAGO AINSA, Trustee and Administrator of the Estate of }
Frank Ely, Deceased, Plaintiff and Appellant, }

vs.

THE UNITED STATES ET AL.

UNITED STATES OF AMERICA, ss :

To the United States of America, Greeting :

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the court of private land claims, district of Arizona, wherein Santiago Ainsa, trustee and administrator of the estate of Frank Ely, deceased, and Edward Camou are appellants and The United States of America are respondents, to show cause, if any there be, why the judgment rendered against the said appellant in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 29th day of January, 1900.

JOSEPH R. REED,

Chief Justice Court of Private Land Claims.

Due and legal service of the foregoing citation is hereby acknowledged this 31st day of January, 1900.

MATT. G. REYNOLDS,

U. S. Attorney, Court of Private Land Claims.

Filed in the office of the clerk, court of private land claims, Feb. 5, 1900.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

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Opinion of the Court.

SANTIAGO AINSA, Adms. & Trustee, }

vs.

THE UNITED STATES. }

In this case it appears from the title papers that in the year 1831 Juan, Rafael, and Ygnacio Elias Gonzales petitioned the treasury general of the State of Sonora, Mexico, for the water and lands of

Neidenibacachi

Santa Barbara, Naidenibacchi, Agua Prieta, and Coabuyona. On the 12th of August of the same year the treasury general ordered an investigation to enquire if the petitioners had the number of cattle they claimed to have and also if the lands owned by them were not sufficient to support their cattle and whether or not they needed the lands asked for in their petition. Investigation was made by the proper officer and reports made to the treasurer general, which satisfied him that the petitioners ought to have the lands prayed for, and he so ordered. Surveys were made, the sitios appraised, and all the necessary steps taken in conformity to the law then in force to authorize a sale of said lands. On the 17th day of September, 1836, there was 18 sitios and 12½ caballerios of land of the places called Santa Barbara, Neidenibacachi, Agua Prieta, and Coabuyona auctioned off to the petitioners for the sum of \$432.50. It is also stated in the proceedings of sale that the 18 sitios and 12½ caballerios of land so sold were comprised in the places of Agua

Neidenibacachi

Prieta, Neidenbacchi, and Santa Barbara, situated in the presidio of Fronteras, for said sum of \$432.50. The purchase-money was paid and final title issued to the purchasers, in which is the following language: "I grant in due form of law 18 sitios and 12½ caballerios of land for raising cattle and horses, comprised in the places named *Agua Prieta*, *Neidenibacachi*, and *Santa Barbara*."

It further appears that the lands of the *Agua Prieta* (the only matter in controversy in this cause), according to the survey, contained 6½ sitios. One sitio was appraised at \$60.00 and the remaining 5½ at the rate of \$15.00 each, as they were absolutely dry. The area included in the survey of this tract by the witness Bonillas is 163,799.66 acres, and we are asked to confirm the grant for that quantity. It is insisted by counsel that the grant was for the place called *Agua Prieta* or for all the lands comprised in the place called *Agua Prieta*, and therefore that it is not a grant by quantity and does not fall within the rule laid down by the Supreme Court of the United States in the case of *Ainsa vs. United States*, 161 U. S., 208.

Ely, adms., *vs.* U. S., 171 U. S., 220.

U. S. *vs.* *Maish*, 171 U. S., 277.

Perrin case, 171 U. S., 272.

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It is true that no specific quantity of land was asked for in the petition, and it is also true that the law then in force authorized the treasury general to grant to them any quantity of land which the proof might show they needed for their cattle and horses, but it is also true that under the provisions of law the vacant lands could only be disposed of by sales to the highest bidder. The minimum price for sitios was fixed by law. Before vacant land could be sold it must be surveyed, appraised, and advertised, so that in every case the officials were advised of the quantity of land to be granted and the purchasers knew the number of sitios to be sold in every case. The expediente in this case shows that $6\frac{1}{2}$ sitios were surveyed and appraised, and that the petitioners were satisfied with the result. We are of the opinion that this was clearly a sale by quantity and falls within the rule laid down by the Supreme Court of the United States in the cases herein referred to. To hold otherwise we would have to presume that the officials of Mexico either did not understand the law regulating the disposition of the public domain or knowingly violated its plain provisions. The Mexican government in construing the grant in this case held it to be a sale by quantity, and the evidence shows that in a proceeding to denounce the demasias the cabida legal $6\frac{1}{2}$ sitios were laid off by survey to the owners and the demasias sold and patented. It is true these proceedings were subsequent to the treaty and not binding on this court, but it is quite persuasive and shows the construction put by the officials of Mexico on the law in force at the date of the sale in this case.

554 The evidence shows that the $6\frac{1}{2}$ sitios constituting the cabida legal, which is the quantity covered by the title, lies south of the international boundary line in the State of Sonora, Mexico. It follows that the claimants have no valid claim against the United States, and the petition should be dismissed and the claim rejected, and it is so ordered.

There are other questions raised in the case, but we deem it unnecessary to consider them. We have held in the Perrin case at the present term that the claimants are not entitled to the demasias.

WILLIAM W. MURRAY,

Associate Justice.

Opinion of the court. Case No. 5. Agua Prieta. Filed in the office of the clerk, court of private land claims, November 27, 1899.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

555

Certificate of the Clerk.

UNITED STATES OF AMERICA, }
Arizona Territory, } ss:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of the record, testimony, proceedings, judgment, opinion of the

court, order allowing an appeal, and citation in the case entitled Santiago Ainsa, administrator & trustee, etc., against The United States *et al.*, case No. 5, Agua Prieta grant, as the same appears of record in my office.

Given under my hand and the seal of said court this twenty-sixth day of March, A. D. 1900.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

Endorsed on cover: File No., 17,714. Court of private land claims. Term No., 250. Santiago Ainsa, administrator of the estate of Frank Ely, deceased, and Edward Camou, appellants, *vs.* The United States. Filed April 12th, 1900.

SEP 28 1901

W. MCKENNEY,
Clerk.

No. 40.
By. of Ford for App.

Filed Sept. 28, 1901.
Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 40.

SANTIAGO AINSA, ADMINISTRATOR OF THE ESTATE OF
FRANK ELY, DECEASED, AND EDWARD CAMOU, AP-
PELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

**STATEMENT OF THE CASE, SPECIFICATION OF
ERRORS, POINTS AND AUTHORITIES, AND
ARGUMENT.**

ROCHESTER FORD,
Attorney for Claimants.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 40.

SANTIAGO AINSA, ADMINISTRATOR OF THE ESTATE OF
FRANK ELY, DECEASED, AND EDWARD CAMOU, AP-
PELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Statement of the Case, Specification of Errors, Points and Authorities, and Argument.

STATEMENT OF THE CASE.

This suit was instituted by the filing of petition of plaintiff Ainsa (Rec., pp. 1-6), which stated that petitioner was the owner of the certain land grant known as the "Agua Prieta," situated partly in Cochise county, Arizona, and partly in the Mexican State of Sonora. The petition represented that said grant was executed on behalf of the Mexican Republic on December 28, 1836, under the laws of the

Mexican Congress of August 4, 1824, and of the Congress of the State of Sonora of May 20, 1825, and July 2, 1834, and that said land was sold in fee to Juan, Rafael, and Ygnacio Elias Gonzales, the grantees, for a moneyed consideration of \$142.50, which was paid at the time.

The facts attending the making of the grant are set out in the petition as follows (pp. 2-4): Said citizens by petition of July 21, 1831, addressed to the honorable Treasurer General of the State of Sonora, applied for the public lands within the places and springs of Santa Barbara, Neidenbacachi, Agua Prieta, and Coabuyona, bounded on the north by the Chiricahua mountains, on the south by the lands of the Sinaloas, on the east by the mountains of Coaguayona, and on the west by the land of Ians. Commission was forthwith given to the citizen Joaquin Vicente Elias, a resident of San Ygnacio, to survey the said public lands and effect the measurement and appraisalment of same in conformity with law, which commission was ordered and signed by the said Treasurer General of the State. The foregoing commission was, on account of the inroads of the Indians, suspended until August 20, 1835, at which date the adjacent owners were summoned, and officials, surveyors, accountants, and markers were appointed as required by law, and the survey was made as follows:

"Taking as a center a lagoon or pool that is in the middle of the valley called Agua Prieta, the southern direction was taken by measuring and counting 59 cords, which ended at a clump of willow trees, which are situated in the middle of the valley, which were to serve as a landmark until the parties erected monuments of masonry, as provided by law. Returning to the center, the direction of the north was taken, and, going up the valley, there were measured 100 cords which ended on a very small hill, fronting towards the east with the pass called 'La Silla,' which was to serve as a landmark, and at which place a heap of stones was placed and a cross for a monument. Returning to the center, the direction of the east was taken, and towards it were measured and counted 168 cords, which ended on a high

hill, which is found on the right of the pass through which passes the old road from Santa Cruz to San Bernardino, which high hill was taken as a landmark, and at which place a heap of stones was placed and a cross for a monument. Returning to the center, the direction of the west was taken, and towards it were measured and counted 240 cords, which ended a little beyond where the little mountains seen in the said direction subside or end, on a long, sloping red hill that has a ledge towards the south, and fronting in the same direction with the highest point of the San José mountain, which hill was taken as a landmark and at which place a heap of stones was placed and a cross as a monument. Returning to the northern monument, there were measured and counted towards the east 168 cords, which ended near the Silla pass on a small hill that is to the right and near two larger ones, which small hill was taken as a landmark and at which place a heap of stones was placed and a cross as a monument. Returning to the northern monument, there were measured and counted towards the west 240 cords, which ended on a small hill in front of the cross monument in said direction, which hill was taken as a landmark, and at which place a heap of stones was placed and a cross for a monument. From this place there were measured and counted towards the south 89 cords, which ended on the cross monument of the west, and continuing in the said southern direction there were measured 60 cords, which ended at the foot of a high hill fronting towards the south with another hill that has a black crest and towards the east with a pass which has to the left two hills formed by red ledges, the foot of which high hill was taken as a landmark and at which place a heap of stones was placed and a cross for a monument. From this place there were measured and counted toward the east 240 rods, which ended at the cross monument of the south in the clump of willow trees spoken of before. From this place there were calculated 178 cords towards the east to the slopes of the first pass which is to the right of the point where ended the cross monument of the same direction, both points lying in a straight line along the foot of the Perrillo mountains. From this place there were calculated 59 cords toward the north, which ended at the cross monument of the east, and the survey was thus concluded of the said lands of Agua Prieta, resulting in 6 short sitios.

"There were further measured in favor of said petitioners and citizens Juan, Rafael and Ygnacio Elias Gonzales 11½ sitios and 12½ caballerios, composing the lands of Santa Barbara and Neidenibacachi, the survey, measurements and other proceedings regarding which are fully set out in the same said grant and title papers; all of which lands embraced within the further measurements, are, as your petitioner is informed and believes, located in the State of Sonora, Republic of Mexico.

"The 6½ sitios, composing the survey of Agua Prieta were thereupon appraised, one at \$60, as it has a small spring, and the remaining 5½ at the rate of \$15 each as they are absolutely dry; and the 11½ sitios and 12½ caballerios, composing the lands of Santa Barbara and Neidenibacachi, were appraised, one at \$80, another at \$60, and the rest at \$15 each, which sums make a total of \$432.50, and at such appraisement all of said lands were put up for sale for thirty consecutive days from June 4 up to July 4, 1836, but there were no bidders."

After final offer of sale and the sale and payment of the purchase price, the proper certificate, signed by the Treasurer General, in proof of the said payment, was thereupon joined to the expediente, and the said lands as measured and surveyed were, in due form of law, granted, given, adjudicated, and sold and conveyed by a complete and perfect title in fee to the said citizens, Juan, Rafael, and Ygnacio Elias Gonzales, and their heirs and successors, and the said title was thereupon recorded, in compliance with law, in the archives of the Treasurer General at Arispe, in the State of Sonora, on page 41 and the other side of it, of the Book of Toma de Razon for the year 1836.

It was further alleged that the title papers are genuine, that the original expediente is found in its proper place in the archives, and that said grant was recorded in Pima county, Arizona, April 25, 1867.

The answer of the Government averred that the State of Sonora and the officers by whom the grant was issued had

no authority to do so, and that the grant was null and void on that account.

There were also the following averments in the answer :

"Further answering, the United States says that the claim that said grant or any portion thereof is located within the jurisdiction of the United States is untrue, but, on the contrary, the said claim is located within the Republic of Mexico and is therefore not entitled to confirmation for the reason that the situs does not fall within the territorial jurisdiction of the United States or of this court as defined by law.

"Further answering, that under provisions of the laws of the Republic of Mexico, in the year —, Camou Brothers presented a claim to the national government of the Republic of Mexico for a confirmation of this grant, and that under and by virtue of an application of said national government said claim was investigated and surveyed according to the calls and description contained in the alleged grant of December 28, 1836, to Ygnacio, Rafael and Juan Elias Gonzales of what is known as the Agua Prieta grant, and that the same was surveyed and lies wholly south of the international boundary line within the Republic of Mexico.

"That under said application, said national government in the year 1882 confirmed the same and sold the demasias thereto, leaving a large area still existing between the north boundary of said grant and the demasias and the international boundary line, which said public lands have since been purchased from the national government by said Camou Brothers.

"That said Camou Brothers now claim and own the whole and all of the lands so granted by the alleged grant of December 28, 1836, and have received from the Republic of Mexico good and sufficient conveyances for the same and wholly lying within the said republic."

By leave of court the petitioners filed the following amended and supplemental petition :

"Comes now Santiago Ainsa, trustee and administrator, etc., petitioner herein, and, by leave of court first had and obtained, files a corrected map made [by] Ygnacio Bonillas, Esq., of the claim herein and also files this his amendment and supplement to his petition, heretofore filed, praying for

the confirmation of the Agua Prieta grant, and petitioner avers that prior to the treaty known as the Gadsden treaty, no resurvey of said grant had ever been applied for or ordered by any one, and that neither the grantees, nor their successors in interest, had, prior to said treaty, any knowledge or notice that within the said monuments there was any excess of land over the areas stated in said title papers, and petitioner avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and retain the same as owners, even after such overplus is shown, without other obligation than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and petitioner further avers that if this honorable court should decide that said sale as recited in said title papers did not, as petitioner avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payments therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained.

"Wherefore petitioner now tenders to the United States of America and offers to deposit with the clerk of this honorable court for the United States of America the sum of \$600 in gold coin of the United States of America as payment for all such overplus or surplus of all such lands in said grant, according to their quality and the price which governed when they were surveyed and appraised, and the further sum of \$200, in like gold coin, for the costs of ascertaining and determining the existence or non-existence of such surplus, and prays that this court order the clerk of said court to accept said sum as such tender, and, as aforesaid, offers to pay said amount, or any amount which may by this honorable court be adjudged to be due for such overplus or surplus, and prays that upon said payment this honorable court decree that petitioner is entitled to and is the owner of all of said tract of land as originally surveyed, including said overplus or surplus, and that by said decree he

be secured in the possession and ownership of the whole of said tract, and petitioner prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and that petitioner be adjudged to be the owner in fee thereof, and for such other and further relief as to the court may seem meet and proper in the premises."

At the trial a duly certified copy of the expediente was offered in evidence (p. 26). It was proved that the original titulo or testimonio was in the possession of Juan Pedro Camou and was in Guaymas, Mexico, and that Mr. Camou refused to produce it. A duly certified copy from the recorder of deeds of Pima county, Arizona, of this original title paper was offered and also a translation of same (p. 27), and deeds showing plaintiff's deraignment of title.

The United States offered the testimonio of the denouncement of the tract of land situate in the district of Hermosillo and known as Agua Prieta, etc. (pp. 212-240); also certified copy of the proceedings of denouncement of a tract of land adjudicated to one Rodriguez and others (p. 254), and the map attached to said expediente and forming a part thereof. There were also introduced the title papers in certain other grant cases, and certain deeds and declarations.

Evidence as to the location of the grant was offered by plaintiff, and opposing evidence by the United States. The controversy was chiefly as to the location of the monument at the northeast corner. Plaintiff introduced evidence that this corner is some miles north of the international boundary line, as shown on the map facing page 24, while the Government attempted to show that the northeast corner is south of the present international boundary line, and that therefore the grant, as originally located, lies south of the international boundary line.

The Government endeavored to show that what the claim-

ant took as the east center monument is in reality the northeast corner, and that the east center lies in a pass called Misa, between such monument and the southeast corner.

The grant was rejected on the ground that it was a sale by quantity, falling within the rule laid down by the Supreme Court of the United States in the cases of *Ainsa vs. U. S.*, 161 U. S., 208; *Ely's Adm'r vs. U. S.*, 171 U. S., 220, and other cases. The lower court held that "the evidence shows that the $6\frac{1}{2}$ sitios constituting the cabida legal, which is the quantity covered by the title, lies south of the international boundary line in the State of Sonora, Mexico."

Claimants were allowed an appeal and duly prosecuted same to this court.

SPECIFICATION OF ERRORS.

I.

The court erred in holding that this grant was one of a certain quantity and not one of a specific tract, and erred in holding that any proceedings in Mexico after the treaty could affect rights to lands in the United States at the time of the treaty.

II.

The court erred in refusing, even if the grant were one of quantity, to permit appellants to purchase the excess lands or demasias on their tender to pay therefor.

AUTHORITIES.

I.

Mexican grants in California were of three kinds: 1. grants by specific boundaries, where the donee is entitled to the entire tract, whether it be more or less; 2. grants of

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quantity, as of one or more leagues within a larger tract, described by what are called outside boundaries, where the donee is entitled to the quantity specified, and no more; 3, grants of a certain place or ranch by name, where the donee is entitled to the whole tract according to the boundaries given, or, if not given, according to its extent as shown by previous possession.

U. S. *vs.* McLaughlin, 127 U. S., 428.

Higuera *vs.* U. S., 72 U. S., 827, 834.

II.

But grants made in Sonora were not floats or a quantity of land to be afterwards surveyed and located, but were sales of the specific tract which had been identified by the survey and appraisement. In these cases the issuance of the title was the final act of the Mexican government and was the investiture of a complete title to the specified tract, with no future act to be performed.

III.

The grant of a tract with specified boundaries covers all the land within those boundaries, irrespective of quantity, and this is true although there is a statement that the tract contained a certain amount, which amount is very much less than that included within the boundaries.

U. S. *vs.* Hancock, 133 U. S., 193.

Maxwell Land Grant case, 121 U. S., 325, 369, 373.

IV.

Under the civil law a sale is always considered *per aversionem* when it is for a total sum and assigns to the land sold existing visible boundaries, such as rivers, highways, fences, pieces of iron, stone, or wood, showing the starting point and the direction of the dividing line with the adjoining

tenements. These sales are held to be *per aversionem* on the presumption that the parties to them have their attention fixed rather upon the boundaries than the enumeration of quantity.

Voice *vs.* Cage, 7 La. An., 672.

If in the sale of an immovable property the lines have been designated, the vendor would be obliged to deliver all that is comprehended within them, although there may be an excess in the measure expressed in the contract.

Hall's Mexican Law, sec. 2109.

When the sale is made of the whole of a certain quantity, by so much per pound, the bushel, or other measure, and the vendor expresses the number of them, he is bound to deliver to the vendee the whole, though it exceed the quantity, and the vendee is bound to receive the whole, though it fall short of the quantity specified.

Schmidt's Civil Law of Spain and Mexico, art. 612,
p. 134.

V.

Where, in Sonora, questions of excess arose in grants due to inaccurate measurements or computations, the remedy was by a further payment by the grantee, and not by a curtailment of the land surveyed.

Law of Sonora, May 12, 1835, cited in *Ainsa vs. U. S.*,
161 U. S., 208.

VI.

The calls of the grant show that a portion now lies within the Territory of Arizona.

See title papers and evidence set out in the argument on this point.

VII.

No proceedings in Mexico subsequent to the treaty can affect rights in the United States fixed at the date of the treaty. The rights asserted by the inhabitants of the ceded territory depend upon the concession made by the officers of the Government having at the time the requisite authority to alienate the public domain, and not upon any subsequent declarations or actions of Mexican officials.

U. S. vs. Yorba, 1 Wall., 412, 423.

ARGUMENT.

I, II, AND III.

The first question in the order of importance in this case seems to be, What land did the parties intend to buy and the Mexican government to sell? Is this grant one where a specific tract was applied for and sold, and therefore different from cases where the petition itself asked for only a certain quantity of land? We submit that this grant is essentially different from the ones which have been passed on by this court, because it was based on a petition for, and was a sale of, a tract by "specific boundaries, where the purchaser is entitled to the entire tract, whether it be more or less, and is a grant of a certain place or ranch by name, where the donee or purchaser is entitled to the whole tract according to the boundaries named."

What land did the petitioners petition for? Was it for certain tracts, not specifying any quantity, or was it for a named quantity? This is plainly answered by the language of the petition itself, which shows (*Rec.*, pp. 116 and 361) that—

"Petitioners made legal petition for the lands that may be found to be public places within the places and springs aforesaid, which are bounded on the north by the Chiricahua

mountains, on the south by the lands of the Sinaloas, on the east by the mountains of Coaguirona, and on the west by the lands of Ians.'"

It is absolutely impossible to construe this as a petition for anything else than the lands—that is, all the lands—within the named boundaries. No mention is made of any quantity.

In fact, the physical condition as disclosed by the recitals of the petition shows that the parties had in mind all the lands within the boundaries named. The statement is that the cattle of the petitioners wander towards the waters of the Agua Prieta, etc., "by which they suffer incalculable damages, because, as they are public lands, everybody who wishes enters freely into them, from which follow insults, robberies, and the scattering of the cattle more and more," etc.

The petitioners evidently wished to acquire all these lands as their own, so that they might have the exclusive use and possession of all the lands for themselves. If they had purchased only part of these lands, leaving the remainder public lands, it seems apparent that they would be no better off than before, because to the extent that any public lands were left, other persons could enter as freely as before, and the robberies and scattering of the cattle would continue.

How did the Mexican authorities understand this petition at the time? Certainly the construction which the Promotor Fiscal, or Attorney General, and other officials put on the petition at the time is entitled to the utmost consideration. The presumption is "very strong, if not irresistible," that this legal adviser and the other officers correctly understood the application. The Promotor Fiscal reported (p. 366) that the application of the citizens was that they "should have adjudicated to them the public lands to be found at the places called Santa Barbara, etc." Is there anything here that can be construed as showing that the application was

for a limited or designated quantity out of these lands and not for "the public lands," which of course means all the public lands?

Again: After the proceedings were finished and the formal title was issued and the usual preamble affixed reciting what had been done, we find that the Treasurer General stated (p. 360) that the citizens appeared on July 21, 1831, "with a written application registering the waters and lands of Santa Barbara," etc.

It is absolutely beyond any doubt that the parties desired all these lands, and that they made application for all of them, their very purpose being to have the exclusive possession of these lands. It is therefore submitted that the proceedings thus far show that the sale of the entire tract was contemplated, and that the sale of a smaller quantity within such tract was wholly contrary to their plan and purposes.

The lower court in its opinion says that—

"It is true that no specific quantity of land was asked for in the petition, and it is also true that the laws then in force authorized the Treasurer General to grant to them any quantity of land which the proof might show they needed for their cattle and horses, but it is also true that under the provisions of law the vacant lands could only be disposed of by sales to the highest bidder."

It will be shown that evidence was introduced as to whether the purchasers needed the whole or only part of the tract, and a decision rendered that they needed the whole thereof.

It is for the foregoing reason most respectfully urged that this case does not fall within the rulings of the cases above cited, because those cases were based on the holding that the petitions therein were for a quantity of land, while this petition is radically different. In the Nogales case, 161 U. S., 208, this court said, at page 224:

"It is to be noted that the petition does not appear in the expediente * * * but the most that can be claimed is that the petition was for $7\frac{1}{2}$ sitios."

In *Ely, adm'r, vs. U. S.*, 171 U. S., 220, this court said, at page 225:

"The petition therefore was not for any tract known by a given name, but for a certain amount of land in such place."

The application here was, as we have above shown, for the whole of a tract known by a given name, and not for a certain amount of land in such place, and we invite a consideration of the further proceedings as showing that the whole of this tract was surveyed, appraised, and sold.

The petition further prayed the treasurer general to "admit the denouncement we make of said lands and to issue the corresponding order for the survey, appraisement, publications, sale and other proceedings necessary to be executed thereon" (p. 361).

The attention of the court is invited to the order which the Treasurer General made for a judicial hearing (p. 118), and to the testimony of the witnesses at that hearing (pp. 119-121). One of the points to be determined was whether the interested parties "have need of all or part of the unappropriated public lands and watering places which they denounce at Santa Barbara," etc.

Here attention was specifically directed to the very question whether all or part of the lands should be granted, and, after the testimony of the witness is that the petitioners had the requisite number of cattle, and that they needed the places which they had named, the second alcalde reported that "in order to proceed with the issuing of the grant to the places Agua Prieta," etc., the proceedings were returned to the Treasurer General.

That official then made an order for the survey, reciting that (p. 361):

"Inasmuch as the foregoing report legally and sufficiently proves that these citizens have a considerable number of live stock for which are not sufficient the sitios they own," etc., "and inasmuch as for this reason the public lands they have denounced, called Santa Barbara, etc., are absolutely necessary to them, the surveyor will proceed to the survey of said lands and he will make the survey, appraisement, publications, etc., and summon the parties to appear at the sale of said lands."

This cannot be taken as anything else than a decision that all the lands were to be sold after a survey and appraisement. Whether the parties had need of all or only part of such lands had been inquired into and determined and no restriction or limitation was suggested. It is thus indisputable, it would seem, that the intention of the Mexican government was to carry out the wishes of the applicants and to survey and sell all the public lands at the places named.

The surveyor reports that he had received the foregoing commission "for the survey of the lands which the citizens have registered in the places known by the names Santa Barbara," etc.

The foregoing comprise the various proceedings up to the actual survey, and in none of these proceedings has any quantity been mentioned. There is nothing to show that any one had any idea how much land was contained within the boundaries of these places. That could be determined only by a survey, and as, under the law, lands had to be sold at public sale after an appraisement, it is evident that the object of the survey was to determine how much land there was in the tracts, so that the value of the tract, according to its quality, could be appraised according to law.

The survey was made, and the proceedings as to the lands at the place of Agua Prieta (which is the only part of the grant involved in this case) conclude as follows:

"The survey being in this manner concluded and containing in its area, the calculation having been made with absolute correctness, $6\frac{1}{2}$ short sitios."

As a matter of fact, however, the calculations were made with far from absolute correctness. Some of the distances were measured and others estimated, and both measurements and estimates were erroneous. A correct survey shows that the tract contains more than $6\frac{1}{2}$ sitios.

Next followed the appraisement, and we invite the attention of the court to the language of the title paper, which is that the appraisement was of "the whole of the surveyed land." The Spanish is (p. 108, 15th and 16th lines from the top), "a efecto de que se justificie el terreno todo mensurado." The very object of the survey was, as above stated, to ascertain the contents of the tract so that it could be appraised and sold. The appraisers could not know the contents without a survey, nor could they appraise an undesignated and unsurveyed quantity within the boundaries. The land, as surveyed, was appraised on the theory—for no one knew aught to the contrary—that it had been correctly surveyed, and it was sold on the same theory. What was appraised and sold was what had been surveyed, viz., the whole tract.

If there was a certain tract identified by designated boundaries and applicants desired to purchase all of such tract, what would or could have been done more than was done in this case? The tract had a value depending upon its quantity, and also upon its quality as to water. To ascertain the quantity and quality and thus fix the price, a survey and appraisement were made and the area was thus computed and the sale made. It turns out in this, as it has done in every other case, that the original survey was inaccurate. In view of the limited skill of the surveyors at the time, this could not have been otherwise. Regarding the inaccuracy of Mexican surveys, this court said in *U. S. vs. Billings*, 2 Wall., 444, at page 447: "Perhaps the province

of California at that time (1839) could not furnish a man capable of making an accurate survey." And this was doubtless just as true of the province of Sonora in 1836; and the court said in *Noe vs. U. S.*, 1 Hoff. Land Cases, 162, 169, referring to an estimate of the contents of a tract of land: "This is perhaps as close an approximation to the real quantity as often occurred under the loose and inaccurate ideas of the extent of land formed by the former inhabitants of this country." It is notorious that the quantity of land within the natural boundaries of Mexican grants often far exceeded the estimate of the surveyor, but this circumstance could not restrict the language of the grant or change the boundaries or the intention of the parties (*White vs. Burnley*, 20 How., 247).

Suppose, as above suggested, that a citizen desired to purchase a specific tract from the government of Mexico, and that government said, in effect, "We will sell you the tract for so much a sitio, depending on the quality," and proceeded to make a survey, and to sell and convey on the basis of such survey. The survey is afterwards found to be inaccurate. Does this fact in any respect change the intention of the parties? It cannot be seriously urged that it does, because if this were true, then it could not have been in the power of the Mexican government to sell and convey title to the whole of any given tract, for the reason that it was not in her power to survey the tract accurately.

This sale was not the conveyance of a right to select 6½ sitios thereafter to be identified and located within the boundaries given. The proceedings were complete in themselves, and attempted to and did convey title to the specified tract according to the calls of the survey.

As to the construction and effect of sales similar to this, we believe it will be of interest and value to present the views of Justice Sluss, of the Court of Private Land Claims, as set out in his opinion in the case of *The Aravaca Land and Cattle Company, appellant, vs. The United States*, now be-

fore this court on appeal, bearing in mind that the present case, as we urge, differs from others in that the application was for a specific tract. Many of these Sonora grants have come before the lower court, and the views of Judge Sluss give the result of his study of the grants and the laws pertaining thereto. We quote from his opinion (pp. 74 *et seq.* in above-entitled cause, No. 153, October term, 1901) as follows :

“ First, as to the question of location :

“ I take it that a grant has been located within the meaning of the provision of the treaty in question when it affects to convey a particular tract of land capable of identification to a reasonable certainty.

“ Now, giving this *título* the most narrow construction possible, it plainly purposed to convey a tract of two *sitios* at a certain place, with a recital that the tract so conveyed is identified by boundaries which are evidenced by certain specified objects. By any fair construction, it purports on its face to convey the whole of the tract within these boundaries.

“ It does not say that it was the conveyance of a right to select two *sitios* thereafter to be identified and located within the prescribed outboundaries. It purports to be the final act of the government—the investiture of a complete title to a specified tract, with no future act to be performed.

“ The contention however is that inasmuch as the grant purports to be of only two *sitios* and the original sale, having been made in 1812, must have been a sale of a limited quantity, and the outboundaries mentioned in the grant containing in fact an area in excess of two *sitios*, it must be construed as a sale of a certain limited quantity to be thereafter selected within a larger tract and was necessarily in the nature of a float and not located within the meaning of the treaty.

“ This contention demands consideration.

“ The grant recites that the original sale was made in 1812; therefore it must have been made under section 81 of the Ordinance of the Intendants as modified by the royal order of February 14, 1805 (Reynolds, 68). This ordinance required, and it was the practice, that no more than four *sitios* could be sold to one person of wealth and no more

than two to a poor person; that the lands should be surveyed and appraised and not be sold for less than the appraisement, and that the appraisement should not be less than certain fixed sums, regulated according to the character of the land.

"Having in view these provisions and the recitals in the grant document, it is a necessary inference that the original sale was for a certain quantity of land, at the place specified, which had been surveyed by officers duly authorized to make the survey and appraisement in pursuance of the royal order.

"The question is therefore presented squarely, do not the proceedings of the survey, appraisement, sale and conveyance operate as a location of the tract sold within the meaning of the treaty?

"In my judgment the proceedings do have that effect.

"The essential feature or object of the proceeding was the protection of the revenues to insure a fair value for the lands sold. To secure this end was the object of the appraisement. This was practically the only protection there was. The law fixed a minimum limit.

"Now, what is an appraisement, except an appraisement of a certain thing? How can a man appraise two sitios of land unless he knows what two sitios? How could the appraisers know what two sitios they were to appraise? Why, this was the very object of the survey, to mark out on the ground the tract to be appraised and sold.

"To survey a tract of land means to mark it on the ground, not in the air, nor on paper. The surveyor was an officer of the government delegated to mark on the ground the tract sought to be purchased. When the survey was completed appraisers were summoned and sworn to appraise the tract of land surveyed. They were not authorized to determine whether the survey was correct or not, or whether it contained a greater area than the quantity sought to be purchased. In fact, they were not supposed to know what area was contained within the boundaries, nor what quantity was petitioned for. The surveyor was authorized to fix the boundaries and determine the quantity of land within these boundaries. The appraisers could not go 'behind the return' of the surveyor as to the area of the tract surveyed. That was their guide and they appraised that tract identified by the boundaries adopted by the surveyor as to the two

sitios of land which was the quantity determined by the surveyors to be contained within the boundaries.

"By that survey and appraisement the land was offered for sale at public auction at the capital of the district many miles from the land and all the world was invited to come and buy; so I may say that the only fair construction of the transaction is that by the intent of the parties the outboundaries established by the surveyor were the boundaries of the two sitios appraised and sold and evidenced the location of the tract sold.

"Presumptively, the survey was correctly made. The presumption of law is that an officer does his duty. Wherever the determination of any matter is committed to a public officer, the determination so made is binding until set aside in a proper proceeding. An error in the determination cannot be shown in a collateral way.

"No survey is ever perfectly accurate. Never were two surveys made precisely alike. They are pre-eminently matters about which different men reach different conclusions. If the survey were in fact erroneous, covering an excess of land over the quantity directed to be surveyed, such error would not render the survey or subsequent proceedings based thereon void as to such excess, but render it voidable only as to such excess.

"The error or mistake in the survey did not appear upon the face of the proceeding.

"Now, it is a principle universally recognized that an official proceeding, which is not void upon its face but voidable only by reason of some mistake or error in the course of the proceeding, is valid and binding until set aside, or annulled in a direct proceeding for that purpose.

"The Supreme Court in *Graham v. U. S.*, 4 Wall., 59, and *U. S. v. Pico*, 5 Wall., 536, has clearly indicated that the proceedings of these officers in surveying and establishing the boundaries of tracts of land for purposes of segregation from the public domain are in the nature of a judicial proceeding and have all the force and effect of judicial determination binding upon the former government.

"By this it is not meant that they are *res judicata*, finally and conclusively binding. A mistake is always open to correction, but can only be corrected in a proper proceeding.

"The idea I seek to emphasize is well expressed in *Smelting Co. v. Kemp*, 104 U. S., on page 640:

"The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of the title the law has made numerous provisions designating the persons who may acquire it and the terms of acquisition. That the provisions may be properly carried out, a Land Department as part of the administration and executive part of the Government has been created to supervise all the various proceedings taken to obtain the title, from their commencement to their close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration, and to pass upon its competency, credibility and weight. In that respect they exercise a judicial function, and therefore it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to notice in a collateral proceeding. Their judgment in such cases is, like that of other special tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction or annulment."

"The views thus expressed are equally applicable to the proceedings of Spanish and Mexican officials in the disposition of the public domain. They are not merely an exposition of a peculiar rule of American law, but the expression of hard, common human sense applicable the world round.

"My conclusion, therefore, is that the proceedings of the survey operate as a determination that the boundaries of the two sitios are the landmarks specified in the report of the survey, and that this determination remains true and binding until set aside in a proceeding for that purpose.

"Such, it seems to me, was the view of the matter taken by both Spain and Mexico as shown by the practice of those governments. By a proceeding of denouncement and composition, lands within these surveyed outboundaries could be surveyed, and if an excess were found it could be appraised and sold; but I think I can safely say that there was no other way in which the excess could be reached until denouncement was made and a determination was had of the question of an excess—that is to say, until the original

survey was directly proceeded against and determined to be erroneous, the purchaser under the original proceedings held the possession and dominion of the entire tract by its surveyed outboundaries against all the world. By the original proceeding the entire tract was segregated from the public domain and remained segregated until by a proceeding, under a denouncement for that purpose, the excess, or demasias, was established or adjudged to exist and as such subject to sale. Until that occurred, there was no excess or demasias."

Our contention as to the construction of this title is, as heretofore stated, that the parties applied for the whole of the given tract according to the boundaries as stated in the application, and that a survey was made for the purpose of ascertaining the area of the tract, and that the whole tract was sold, the only error being that there was a mistake in computing the area of the tract.

The opinion of the lower court, however, states that "the expediente in this case shows that $6\frac{1}{2}$ sitios were surveyed and appraised, and that the petitioners were satisfied with the result."

With the utmost respect, we suggest that the foregoing statement is in direct contradiction of the record. Six and one-half sitios were not surveyed. There was only one survey, which was of the whole tract, a later survey showing that the tract contains much more than $6\frac{1}{2}$ sitios. As we have heretofore shown, it was "the whole of the surveyed land" which was appraised. The particulars of the appraisements, as set out on page 137 of the record, eleventh line from bottom, state that the lands were appraised as follows: "The $6\frac{1}{2}$ sitios which compose the survey of Agua Prieta, one in the sum of \$60, on account of having a small spring, and the other $5\frac{1}{2}$ at the rate of \$15 each on account of their being absolutely dry." The other lands surveyed were appraised "one sitio at \$80, another at \$60, and the rest at \$15." The court will notice that the land was sold

with regard to quality as well as to quantity, and this is true in all the Sonora grants. The purchasers herein were not buying an unsurveyed, undesignated quantity of land, but, on the contrary, were buying land specifically identified by the fact that part contained water and part did not. The land was of different value in different parts of the tract, and the appraisements at these different valuations contemplated the sale of the specific land so appraised. In fact, it seems idle to urge that the parties were buying an unsurveyed, unidentified right to lands to be located by a subsequent survey, or that a decision giving them a fixed quantity of land, which might all be dry, would accord with the intent of the parties, which was to buy certain specified lands, part of which were watered.

To put our contention in a still different form, we ask: Why was the quantity which was appraised and sold stated to be $6\frac{1}{2}$ sitios? There can be but one answer to this, and that is because that was the area of the tract as determined by the officers of the Mexican government; therefore in selling $6\frac{1}{2}$ sitios they sold the whole tract. So far as any one knew, the tract contained $6\frac{1}{2}$ sitios and no more, and to suggest that the Mexican authorities sold this amount and reserved the balance is a contradiction in terms, because no one had any idea that there was any balance or excess to be reserved. The petitioners were satisfied with the area, because this was an official statement to them by the proper Mexican authorities as to the contents of the tract. They desired to purchase it and were willing to pay the price therefor. If the surveyor had reported that the area was 10 or 12 sitios, or any other quantity than the $6\frac{1}{2}$, the only difference in the proceedings would have been that a correspondingly greater price would have been paid. In any and every event, the tract as an entirety would have been sold.

The lower court further states:

"We are of the opinion that this was clearly a sale by

quantity and falls within the rule laid down by the Supreme Court of the United States in the cases herein referred to. To hold otherwise, we would have to presume that the officials of Mexico either did not understand the law regulating the disposition of the public domain, or knowingly violated its plain provisions."

As to this we submit, with great respect, that there is nothing in the record justifying this language or conclusion. The laws under which this grant was made are fully set out in Reynolds' Land Laws, p. 186 *et seq.* Article 28 provides that—

"To no one who is a new breeder shall more than four sitios be given; but to those who need more, from the abundance of their stock, the treasurer shall grant only what they need, after taking the evidence referred to in the preceding article, assuring himself of the truth of the application by all the means within his reach before making the grant, to which end he shall see that the parties in interest take no part in the proceedings he may institute to attain that object."

This was done, and it was determined by the testimony of disinterested witnesses that the applicants had need of all the lands they petitioned for.

Article 66 *et seq.* refer to the survey of lands. These laws of Sonora, following the laws which had existed under the intendants, provide that lands could be sold only after they had been surveyed and appraised. In Sonora nothing was known of a grant which consisted of a sale of an undesignated quantity of land, to be afterwards surveyed within exterior boundaries. Such floating grants were made in California under different laws, but were never made under the laws of Sonora governing grants similar to the one under consideration.

In the case at bar the survey of the lands had been made strictly in accordance with law.

The appraisement was regulated by article 64, fixing for

dry sitios a minimum price of \$15, and for those that have a spring or river \$60 each.

The appraisalment herein was in conformity with law, and no criticism can be made as to the regularity of any of the proceedings. We therefore ask, What ground is there for the statement of the lower court that the Mexican officials "either did not understand the law regulating the disposition of the public domain, or knowingly violated its plain provisions"? There was only one error, which was as to the area of the tract, and this was a mistake of fact, not ignorance of law or a violation of it. In endeavoring to sell the tract and in strictly following the law as to a prior survey and appraisalment, they fell into an error in this case, as in every case, as to the area, but this was the only mistake of any sort in the proceedings.

On our theory that the purchasers bought the whole of the tract, the lower court erred in dismissing this petition for the reason that "the evidence shows that the $6\frac{1}{2}$ sitios constituting the cabida legal, which is the quantity covered by the title, lies south of the international boundary line in the State of Sonora, Mexico." The phrase "cabida legal" has no application to a case where the whole of a tract was sold, because in such a case the purchaser acquires title to the whole, whether it be more or less.

Neither could the foregoing ruling of the lower court apply to a case where the land is of different quality in parts and was bought and paid for at different prices based on the different qualities. If a tract is of uniform quality without, it might perhaps be urged in some cases that a given quantity anywhere within the tract would answer the purpose of the sale; but in this case to restrict the grantee to the cabida legal, measured from the initial point, when there is nothing to show that this would not exclude the watered sitio, for which he paid \$60, would palpably be unjust.

IV.

We submit that this sale was, under the civil law, a sale *per aversionem*, and that it exactly fulfills the requisites of such a sale. It shows the starting point and the dividing lines with the adjoining tenements. The record states (p.362) that the owners of coterminous lands were summoned before the survey was made. The title paper assigns existing visible boundaries to the lands, viz., the natural objects called for, and the sale seems to come strictly within the definition of a sale *per aversionem* as given in *Voice vs. Cage*, 7 La. An., 672.

Again: It was the sale of an immovable property where the lines were designated, and under the law as stated in Hall's Mexican Law, section 2109, the vendor would be obliged to deliver all that is comprehended within such lines, although there may be an excess in the measure expressed in the contract.

Again: It is the sale of the whole of a certain tract by so much per sitio, where the vendor expresses the number of sitios, and under the civil law as stated by Schmidt in his Civil Law of Spain and Mexico, article 612, page 134, the vendor is bound to deliver to the vendee the whole, though it exceed the quantity.

V.

We have urged as the fifth point in our brief that in Sonora where questions of excess arose, due to inaccurate surveys or computations of the area of lands, the remedy was by a further payment by the grantee and not by any reduction of the land surveyed, if the grantee choose to make the payment and retain the land.

Law of Sonora, May 12, 1835, cited in *Ainsa vs. U.S.*, 161 U. S., 208.

No exception has appeared to the rule that all of the grants were inaccurately surveyed, and that in every one the amount actually contained within the boundaries is found to be far in excess of the quantity stated. The rights of the purchasers may therefore be considered in two lights:

1. What were their rights by virtue of the grant itself before there was a second survey and before it was shown that there was an excess?

2. What were their rights after there was a second survey and after it was shown that there was an excess?

1. At the risk of some repetition, we submit that the grant itself was the final act of the government, the investiture of a complete title to the specified tract identified by the survey, with no future act to be performed. It was the designation of the land, made in the same manner and with the same effect as the delivery of juridical possession in California, the difference as to time being that in Sonora the lands were surveyed and possessed prior to the delivery of the grant. The boundaries established by the survey were the boundaries at which the purchasers were to place monuments of stone and mortar, as provided by law. These boundaries were "their boundaries" and were the official designation by the government of the land sold. As stated by Justice Sluss in his opinion set out above, "the purchaser under the original proceedings held the possession and dominion of the entire tract by its surveyed outboundaries against all the world."

The original proceedings were not the sale of a right to locate the quantity within the boundaries, for the very simple reason that the boundaries were not known to contain any more than the quantity. The very object of the survey was to locate and identify the quantity prior to the sale.

To every part of the land within the boundaries the

purchaser had therefore an equal right of possession and ownership.

Mistakes in surveys were not confined to Mexico, nor is the position which we are here advocating a new one. On the contrary, it was announced by Chief Justice Marshall at an early day and has always been followed. The case of *Taylor vs. Brown*, 5 Cranch, 234, was one where under a warrant for 2,000 acres, 3,025 acres had been surveyed. In delivering the opinion of the court Chief Justice Marshall said :

“ The warrant, it is said, was an authority to survey only 2,000 acres, and, for the surplus, the survey was made without authority.

“ It is a fact of universal notoriety in Virginia not only that the old military surveys but that the old patents of that country generally contain a greater quantity of land than the patents call for. The ancient law of Virginia notices this fact, and provides for the case. It prescribes the manner in which this surplus may be acquired by other persons, and it is worthy of notice that the patentee must himself reject the surplus before it can be acquired by another, and, after having so rejected it, he has the election to allot it in such part of the patent as he pleases.

“ The survey is an appropriation of a certain quantity of land by metes and bounds, plainly marked by an officer appointed by the Government for that purpose, and it would seem that the Government receives his plat and certificate as full evidence of the correctness of the survey. This being the case, it is admitted by the Government to be an appropriation of the land it covers, and it is difficult to discern a rule by which the survey could be reduced on a caveat by the owner of an interfering survey unless the entry on which it was made was in such terms that the excess might be considered as surveyed contrary to location. For to every and to each part of the land surveyed, its owner has an equal right. * * *

“ It is proper to premise that there is but one species of cases in which any court of justice is authorized by our land law to divest the owner of a survey of the surplus included within its boundaries, namely, when the survey was made

posterior to an entry made by another person on the same land; and to do more would be unequal and unjust, inasmuch as a survey which is too small cannot be enlarged."

The case of *Taylor vs. Brown* was cited and followed in the early California case of *Vanderslice vs. Hanks*, 3 Cal., 28, where the court showed that even where the grant provided for a measurement and reservation of surplus "it was a grant of title to the whole, with a defeasance as to the surplus." The court said that "until the proper proceeding is adopted to restore the surplus to the public domain 'to every and to each part of the land granted, its owner has an equal right.'"

It is not believed that this reasoning of Chief Justice Marshall can be criticised in any respect, and we take it as a proposition that cannot be controverted that in every one of these Sonora grants the legal title and ownership of the whole of the tract which had been surveyed passed to the purchaser by virtue of the original title papers, though by mistake more land was included than was paid for.

2. Rights of the parties as to the excess.—As to this we submit that the grantees had the right to remain in the ownership of any surplus that might be afterwards ascertained; that such right was conditioned only on a further payment for such excess; that this right was property protected by the treaty, and that this court has power to recognize and enforce such right by virtue of the further payments or tenders made by the grant claimants, as shown by their supplemental petitions.

The question of an excess does not, we think, properly arise in this particular case. Where a certain quantity is applied for, but, by reason of the inaccuracy of the survey, the purchaser acquires title to more than this quantity, the propriety of a further payment may be considered, but in this case we have argued that it was the intention of the

parties to sell the whole of the tract, and that the purchaser acquired the same, whether it were more or less than the amount stated.

The rights of grantees as to what is found to be an excess were clearly defined and fixed under the Mexican law. Not only the principles of natural justice but the rules of the civil law as well give an explicit answer to the questions regarding these excesses.

The principle of justice laid down by Chief Justice Marshall is that the owner is entitled to retain the whole of the tract if he so desires. The patentee must himself reject the surplus before it can be acquired by another, and, after having so rejected it, he has the election to allot it in such part of the patent as he pleases.

The survey was a designation by the Mexican government of the tract sold. The purchaser supposed that he was buying this surveyed tract which he had examined during the survey. He had no reason to think that the survey was inaccurate or that there was in the tract any more land than he was paying for. The government sold and the purchaser bought the designated tract, the only error being as to its area. As repeatedly stated heretofore, the object of the survey was to locate the very land to be sold—to locate it on the earth's surface.

Now, it might well be that the tract as a tract might be desirable to the purchaser, while the tract as curtailed might be of little value. Suppose the tract as originally surveyed contained a spring at each of the four corners and water nowhere else. The tract, if it included these springs, would be valuable. If, however, it were discovered that the measurements were inaccurate and they were restricted to the exact length and thus failed to include the springs at the corners, the tract as thus corrected would be of no value. The sale would have been made according to an appraisal based on the quality of the land as specifically including the springs, whereas a grant by quantity only measuring

the exact distances from the central point would, under the circumstances supposed, give the grantee only a grant of dry land, which would be of no value to him for ranching purposes, and would be a wholly different grant from what he had bought and paid for. The grantee would naturally say: "I bought the whole tract because it had water on it. The tract without this water is valueless to me." The Mexican government would say in effect: "But you pay for only a certain quantity, and by a mistake in the survey you have acquired title to more than that quantity." To this the reply of the grantee would be: "I will retain the tract and make an additional payment for the excess. I did not know that there was any error as to the contents of the tract. If the proper area had been ascertained at first, I would have paid the sum called for, and now that it has been ascertained that there was an error, I am ready to pay what I would have paid at the time."

The foregoing fairly expresses what was the law of Sonora at the time this grant was made and continuously up to the treaty. Articles 1 and 2 of the law of Sonora, of May 12, 1835, are as follows:

"ART. 1. Those who have acquired property in lands of the State by lawful title are owners in good faith, even when they have lost that document, for they are entitled to revalidate it upon proof of the incident that may have occurred.

"ART. 2. Those are likewise *bona fide* owners who under the descriptions given in their records of survey occupy some excess of land; and they are entitled to such excess, even after such excess is shown, without any other requirement than that of paying for the excess in accordance with the quality of the land and the price which prevailed when the land was measured and appraised; and only in case the owner does not want the excess, or when such excess is very great in the opinion of the Government upon the report of the treasurer, shall such excess be awarded to any one denouncing or soliciting it; and such persons shall bear the expense of the resurvey, if the excess has not been ascer-

tained. In lands measured by calculation (graduacion) none shall be regarded as excess that does not exceed half a sitio."

There was no law under which the Mexican government at any time made a new survey of grants, and there was no obligation on the part of the grantee to do so. Such proceedings were instituted at the instance of some third person in the hope that some excess might be discovered which the grantee would not care to retain.

No resurvey of this Agua Prieta grant had been made prior to the treaty, and, of course, up to that time there were no demasias or excess.

The very definition of demasias implies that there must have been a second survey or examination revealing the error in the first survey. Surplus lands (demacias) are defined "to be those held by private persons on primordial title, and to a greater extent than specified, such surplus, however, being within the boundaries mentioned in the title and consequently mixed up in its entirety with the area for which a title is held."

Mr. Orozco, a Mexican jurist, at page 345 of volume 1 of his works, discussing the law of March 26, 1824, defines demacias as follows:

"We have already said that this overplus (demacias) consists of agrarian quantities which result within a well-identified perimeter between the area covered by title and the area which the perimeter fixed by the respective title incloses *de facto*. Thus, for example, if the title concedes 1,000 hectares (2,470 acres) of land within fixed and determined monuments, and upon a new examination of it it is demonstrated that within these monuments there is not 1,000 but 1,500 hectares, (3,706 acres) this excess of 500 hectares (1,235 acres) is what is today called national overplus (demacias nacionales)."

This law of Sonora continued in force up to and after the treaty. In the Nogales expediente set out in *Ainsa vs. U. S.*

161 U. S., 208, at page 226, the Mexican Attorney General, under date of December 5, 1842, six years after the constitution of 1836, specifically refers to "the provisions of the last clause of article 2 of decree No. 51 of the 12th of May, 1835, of the old State and which is still in force." The State laws relating to sales of land continued in force under the various forms of government and after the decree of September 17, 1846, which again classified the revenues of the General Government and the States. The Canoa grant was confirmed by the lower court and this court in *U. S. vs. Maish*, 171 U. S., 242. That was a grant where in 1849 the substitute Treasurer General of the State of Sonora issued title papers on a grant which had been instituted in 1820, thus clearly showing that the State laws were in force in 1849.

Moreover, it is shown by the Mexican archives at Hermosillo that the above-cited law was in force up to and after the treaty, and that the subject of *demasias* was acted on year after year in accordance with the provisions of the law of 1835. A *reseña*, or catalogue, of all grants existing in the archives at Hermosillo has been printed by Mr. Rochin, the official keeper of the archives, and a copy has been for years open to the inspection of government counsel and the lower court. In our printed brief in this case in the lower court we called attention to the fact that the subject of *demasias* was continually acted on in the following, among other, cases: Baviso grant (p. 12), in 1852; in 1824, Capulin grant (p. 20); in 1842, on proceedings begun in 1839, Curea grant (p. 25); in 1849, on *demasias* denounced in 1846, Casita grant (p. 30); in 1852, Chupisonora grant (p. 33); in 1835, Carrizo grant (p. 35); on a grant instituted in 1782, Cachagua grant (p. 36); in 1850, Carrizal de Tenas grant (p. 37); in 1770, on proceedings in 1769, Imalda grant (p. 50); in 1850, Mezquite Dulce grant (p. 65); in 1853, Monreales grant (p. 66); in 1852, Pozo de Crisanto grant (p. 77); in 1830, Robertos grant (p. 91); in 1850, Sibachicori grant (p. 98); in 1853, Sonibiate grant (p. 98); in 1817, Santa

Maria grant (p. 113); in 1844, San Antonio grant (p. 115); in 1842, San Francisco grant (p. 115); in 1847, San Juan grant (p. 128); in 1849, on proceedings in 1847, San Francisco grant (p. 129); in 1853, San Antonio grant (p. 129); in 1847, Sivachicori grant (p. 130); in 1824, Tonibavi grant (p. 148).

The *Reseña* further shows that the baldios and demasias between the Carrizal and other grants were adjudicated to one Garcia in 1855, and also shows (p. 141) that title to the demasias of the S. Jose del San Jon grant was issued in 1855.

We believe that the practical construction given by the Mexican officials to their own laws at the time is of far greater value than any speculations or theories that may be advanced at the present day. As this court has said in *Hornsby's case*, 10 Wall., 224 :

"We cannot, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than they received from the Mexican authorities who were entrusted with their execution."

The construction given to this law of May 12, 1835, is that the owners were entitled to any surplus; that this was their right, and that this right continued in force up to and after the treaty. The language of the law of 1835 is that the owners are "entitled" to such excess. This is the same word used in the first article, which provides that owners who have lost their title paper are "entitled to revalidate it." Evidently where a man had in good faith bought lands from the State, and had lost his document, he had in natural justice a right to acquire a copy thereof. That was not a privilege which, in justice, the State could extend to him or deny at its pleasure. Neither was the payment for the excess a privilege. It also was a right to which the grantee was entitled, and was based, as we have attempted to show, on the fact that the government had designated to

him the land which it sold, and it could not, in justice, take any part of the tract from him if he was willing to make a further payment.

The whole body of the Mexican law as to *demasias* is absolutely founded on the principle that the original grantee had the unqualified right to make a further payment and retain the surplus whenever the same might be ascertained. The law of July 22, 1863 (Hall's Mexican Law, pp. 173, 175), shows (art. 5) that the possessor had the right to retain the public land "if he had possession for ten years or a title translativo of dominion." In order to determine the extent possessed, "it shall be (art. 6) within the limits mentioned in the title, even when they are not in conformity with the amount of land." "In the two preceding articles is comprehended the public land confounded in its totality with the fields which are not sold, or comprehended within them" (art. 7).

Article 8 provides that where the lands are denounced by a third person the original grantee "will concede the land to the denouncer, or pay him its value according to the tariff price in cash down."

We submit that this is of the greatest weight as showing that in every case the remedy for the excess was by a further payment and not by taking from the original purchaser any portion of the land if he cared to retain it.

In *U. S. vs. Moreno*, 1 Wall., 400, 405, this court said :

"A right of any validity before the cession was equally valid afterwards. The act recognizes alike legal and equitable rights and should be administered in a large and liberal spirit."

So in *Ely's Adm'r vs. U. S.*, 171 U. S., 220, the court said :

"The Government promised to inviolably respect the property of Mexicans. That means the property as it then was and does not imply any addition to it. The cession did not increase rights. That which was beyond challenge before

remained so afterwards. That which was subject to challenge before did not become a vested right afterwards."

It cannot be doubted that if this excess had been discovered at any time prior to the treaty and the grantees could properly be called on to pay for same, they would have had the right to make such payment and remain in possession of the whole of the tract. In all of the cases which have been cited and examined by the undersigned it does not appear that this right was ever once called in question. It was a property right which remained inviolate. This Government can undertake to curtail these grants only under the theory that it has succeeded to the rights of Mexico and can do what Mexico herself would have done, and then we are in a position to rely on the law that the grantee could pay for the surplus and retain it.

VI.

LOCATION OF THIS GRANT.

The greatest part of the testimony offered by the Government was an attempt to show that this grant as originally surveyed was wholly south of the present international boundary line. If this were true, it would be unnecessary to discuss any other point; but this attempt is shown by the evidence to be absolutely futile.

The map of the grant made by Mr. Bonillas, facing page 24 of the record, was conceded by the Government to designate correctly the center point, Agua Prieta. (See testimony of Mr. Flipper, pp. 43, 44.) This witness further testified that the south center monument, which is 59 cords south from the center, is correctly designated on the Bonillas map. The west center, southwest and southeast monuments, as designated by Mr. Bonillas, were not called in question. Thus, no exception was taken to the part of the Bonillas survey

south of the line. It is admitted that the southern monuments are correct, or, at any rate, those that were visited were specifically admitted to be correct, and those that were not visited were not questioned in any respect.

The controversy turns on the location of the northeast corner and of the east center monuments.

The north center monument is not at any conspicuous point in the topography of the valley, but was located with reference to the Silla pass, the northeast corner. The description of the title paper of the north center, the east center, and the northeast monuments is as follows :

"Returning to the center, the direction of the north was taken, and going up the valley, there were measured 100 cords, which ended on a very small hill, fronting towards the east with the pass called La Silla, having ordered a heap of stones to be placed there, and a cross as a monument.

"Returning to the center the direction of the east was taken, and towards it were measured and counted 168 cords, which ended on a high hill which is found on the right of the pass (which is there) through which passes the old road from Santa Cruz to San Bernardino, where I ordered placed a heap of stones and a cross as a monument.

"I, the judge commissioner, in order to continue these proceedings, went with the appointed officers to the northern monument, and having taken the direction of the east, there were measured and counted toward it 168 cords, which ended near the Silla pass, on the small hill that is to the right and near two larger ones, where I ordered placed a heap of stones and a cross as a monument."

The court will notice that both the northeast and east center monuments are located with reference to passes in the mountains, and that the northeast was near the "Silla pass, on the small hill that is to the right and near two larger ones," while the east center "ended on a high hill which is found on the right of the pass which is there, through which passes the old road from Santa Cruz to San Bernardino." As in making these descriptions the parties were looking to-

wards the east, "to the right" would be to the south. To answer the calls of the papers, therefore, the northeast corner monument should be found on a small hill south of a pass—the Silla or Saddle pass—and near two larger ones, while the east center is on a high hill to the south of the pass through which passes the old road from Santa Cruz to San Bernardino.

The title paper in describing the northeast corner says that it is "en una loma pequeña," "on a very small hillock or hill which is to the right and very close or touching (immediata) two other higher ones," while the hill south of the pass at the east center is designated as a "loma alta," or high hill.

If the court will bear these descriptions in mind, the following discussion of the testimony as to the location of the calls will be seen to be relevant and, we think, conclusive.

The contention of the Government was that the pass taken by the claimants as the east center monument is the northeast monument and is south of the international boundary line; that the east center monument is somewhat south of this northeast monument, and that the northwest corner was also south of the line, thus placing the grant, as originally located, wholly in Mexico. The Government witness Flipper, who, in this as in all the other cases, has found it impossible to locate the calls as the other surveyors do, testified as follows (p. 53):

"Q. Then your assumption or theory is based on the supposition that the point described by Mr. Bonillas as the east center monument is in fact the northeast monument? A. That is my theory.

"Q. And if it is true as a matter of fact that the northeast monument of this grant as originally surveyed is what is termed the Silla pass, the northeast corner as laid down on Bonillas' map, you would, of course, have a different theory. A. If that is true, why certainly.

"Q. If the old road from Santa Cruz to San Bernardino is correctly represented on this international boundary map,

is it not true, in your opinion, that the monument on the loma south of that is the east center monument of this grant?
 A. If this is the old road referred to in the old title paper, then that would be true."

THE NORTHEAST CORNER MONUMENT.

As to this monument Mr. Bonillas testified as follows (p. 16):

"The northeast corner monument I also found at the place described in the title papers. The Puerto de la Silla was pointed out and described to me with all precision possible. It is the first pass north of Gallardo, and is so called from the perfect outlines of a saddle formed by the profile of the northern extremity of the Perrillo mountains, now known as Swisshelm mountains, the horn of the saddle being formed by College peak, also known in the locality as Silver peak.
 * * * The northeast corner is on a very small hill at the Puerto de la Silla.

"Q. What does that mean? A. It means the Saddle pass, and I was told that the reason it was named that way was from the perfect outlines of a saddle in the mountains right where the Swisshelm mountains end towards the north.

"Q. State whether or not the mountains present any such outline? A. They do very distinctly, and it is a very noticeable feature, and the horn of the saddle is formed by a high peak called College peak, and from the horn it slants down and curves just like a saddle."

The report of Mr. Oury as to Saddle pass is, like the testimony of Mr. Bonillas, as full and clear as could possibly be imagined. We give it as follows (pp. 188, 189):

"The location of the northeast corner is described in the expediente as being on a small hill to the right and adjoining the 'Puerto de la Silla,' or Saddle pass, and near two other higher hills.

"I made diligent inquiries of several settlers in the neighborhood who did not know what was known as to the Paso de la Silla, but my guide, who was born in Fronteras some fifty years ago, and who has lived in this neighborhood all his life, claimed he knew the pass known by that name, and

he took me to a broad pass situated at the south end of the Swisshelm mountains near what is now known as Silver creek, and used by travelers crossing from this portion of the Sulphur Spring valley to the San Bernardino valley. To the right of this pass, on a small round hill, near two other higher ones, I found a monument of stones, which I took as the northeast corner of the claim.

"I regard of importance to state further that at the point where this pass lies the profile of the adjoining mountains shows very perfectly and noticeably the outlines of a saddle, the round and abrupt Silver peak serving as the horn.

"In addition to the above, it is to be remarked that between the pass where the east center is located and the one where I established the northeast corner, there is no other broad and commonly traveled pass in the mountains. These reasons led me to believe, though it is not now commonly known by that name, that this divide was in former times known as the Paso de la Silla."

("South" end of the Swisshelm mountains is evidently a mistake. It should be "north" end.)

Here are two witnesses who carefully and accurately locate the northeast corner exactly in conformity with the calls of the title. As the location of this corner is a matter of vital importance in the case, one would suppose that the Government's witnesses would have gone to this corner to see whether the description given by Bonillas and Oury was accurate, but it is a matter of surprise, to say the least, that although ample time was afforded the Government witnesses to examine this monument, they wholly failed to do so. Mr. Flipper testified (p. 46):

"Q. Have you or have you not been at the point designated on this map as the northeast corner, being Puerto de la Silla or College peak? A. I have not."

On page 36 this witness testified:

"Q. Do you know what is known as—what has been testified to as College peak by Mr. Bonillas and his map filed by him and his testimony taken at the last session of this court? A. Yes, sir."

We ask the court to note that this testimony of Mr. Bonillas was given in February, 1899. On motion of the Government further hearing of the case was suspended, and Messrs. Flipper and Tipton made their examination of the monuments in April, 1899, and testified in May, 1899. Mr. Bonillas' testimony was thus fully before these gentlemen and open to their criticism, but not one syllable was introduced by the Government tending to disprove his testimony that the point taken by him as the northeast corner exactly corresponds with the calls of the expediente. If there had not been at this place "a small hill that is to the right and near two larger ones," the Government's witnesses could have so ascertained by an examination of the place and could have so testified. If this Saddle pass does not in fact conform to the detailed and minute description given of it by Mr. Bonillas and Mr. Oury, the testimony as to its perfect resemblance to the outlines of a saddle could have been controverted. In view of the ample opportunity afforded the Government to disprove this testimony and the failure of the Government to attempt in any way to do so, we ask with the greatest seriousness whether it is not a legitimate and indeed irresistible inference that the Government concedes this testimony to be true? As it was direct and uncontradicted in any way, under the ordinary rules of evidence it must be accepted.

It would have been much fairer, we think, if the Government witnesses had not avoided this northeast corner. Claimant's witnesses had directly testified that it conformed to the calls of the expediente. This was an issue that the Government was challenged to meet. If the Government witnesses had gone to this point and had found that it answered the calls of the expediente, it would have been justice to the claimants so to testify. If it did not answer the calls, the Government's case would have been materially aided by evidence that Bonillas and Oury were in error. It would seem that positive testimony should have been offered

by the Government as to the location of this call, but no Government witness visited it. This certainly was not what might have been expected, unless the failure to do so is to be taken as an admission of the correctness of the claimant's testimony.

THE EAST CENTER MONUMENT.

This monument, as heretofore observed, is on "a high hill which is found on the right (south) of the pass which is there, through which passes the old road from Santa Cruz to San Bernardino."

The evidence as to this monument seems absolutely conclusive that it is correctly designated by Mr. Bonillas on his map as the east center monument, because it is identified by the high hill to the south, and the evidence is likewise conclusive that it cannot be the northeast corner, as claimed by the Government, because near this pass there is no "small hill that is to the right (or south) and near two larger ones." These facts were established by all of the witnesses. Mr. Benillas testified as to the east center monument as follows (p. 17):

"The description of the point where the east cruz monument was placed is so precise and clear, in the original field-notes that I encountered no difficulty in identifying it. I inquired of people from Fronteras and Santa Cruz who traveled forty or fifty years ago over the road leading from the latter town, then a presidio, to San Bernardino, and from a man who was a soldier among the escort of the Mexican boundary commission while making the original survey of the international boundary, and the answer is uniformly the same, that the road leading from Santa Cruz to San Bernardino crossed the Ceniza or Perrillo range of mountains through the Gallardo pass, north of the well-known butte called Gallardo. The same road is traveled today, as it is the most direct route between the two places mentioned, and the one which offers less difficulties to travelers both on vehicles and on horseback. Led by my guide, I followed this old road from the creek in the center of the valley in

an easterly direction to Gallardo pass, where the international boundary monument No. 82 is located. From there I went to the top of a high hill, which rises to the right or in a southerly direction, where I found a large old monument of loose stones, at the foot of which a cross formed of the same material can be clearly defined. * * * I found this high hillock, with a monument on the top of it, which answers perfectly, to my mind, the calls of these title papers."

Mr. Oury's report as to this east center monument is as follows (p. 187):

"Returning again to the center, I go in an easterly direction along what is commonly known as the old overland road to California, and which is the same road leading directly from the town of Santa Cruz, Sonora, Mexico, to the San Bernardino valley, and on the top of a high hill situated on the south side of the divide or pass through which this road crosses the mountains, I found a large monument of loose rock. This answering so precisely the description of the location of the east center monument of the claim given in the expediente, I take it as such in my survey."

This pass with the high hill south of it, on top of which is a monument, was identified by Mr. Flipper just as clearly and accurately as by the witnesses for claimants. That gentleman testified (p. 49):

"Q. You take the tracing of the international boundary line; you see there that line marked 'road from Santa Cruz to San Bernardino'? A. I do.

"Q. You see where the line is with reference to monument No. 19? A. I do.

"Q. That point at the monument No. 19 is a pass in the mountains, is it not? A. It is.

"Q. In the pass and south of that point there is a loma alta? A. There is a loma alta.

"Q. On that loma alta there are two large monuments? A. On this loma alta there are two large monuments on a line nearly north and south."

This pass taken by claimants as the east center is shown by the absolutely uncontradicted evidence to answer in every respect the call for the east center. It cannot be the northeast corner, as the Government contends, because at this pass there is no "very small hill to the right (or south) and very near (or touching) two larger ones." Mr. Flipper further testified as to this east center monument (p. 49):

"Q. Are there any higher hills immediately near this loma alta, about which you have testified? A. Not immediately close to it. They are north.

"Q. Are there immediately near it (the loma alta) two other higher peaks? A. Immediately near it there are not two other higher peaks, but west of it there are several other higher peaks.

"Q. It (the supposed road through Misa pass) makes a detour around the southern part of this Gallardo peak and "

The Spanish for the hill at the northeast corner is, as heretofore quoted, "una loma pequeñita." Mr. Flipper testified as to the hill south of the east center monument (p. 59):

"Q. Is this phrase (place) which is denominated the east center monument una loma pequeñita? A. It is not."

He further testified (p. 57):

"Q. Are there immediately near it two other higher peaks? A. Immediately near it there are not two higher peaks, but west of it there are several other higher peaks.
* * * Immediately close to that loma there are no others, but a little bit west of it there are several.

"Q. How far distant are these peaks from these other lomas? A. About a mile I should judge."

This evidence seems to be as direct as is possible to be framed by language, that immediately near the point taken by the Government as the northeast corner there are not two other higher peaks. This point, therefore, absolutely fails

to answer the call for the northeast corner, which is on a small hill very near two larger ones. To sustain the contention of the Government the explicit language of the expediente will have to be set at naught.

Mr. Bonillas' testimony is equally clear. Regarding the northeast corner he testified as follows:

"Q. Will you translate this language 'en una loma pequeña que esta a la derecha, y inmediata a otras dos mas altas'? A. On a very small hillock or hill which is to the right and very close to two other higher ones.

"Q. How near to this peak which you have termed the east center monument are there to the west any peaks higher than it? A. Approximately this is a high hillock, and that loma alta to the west extends for a considerable distance, but I do not know that I can remember any hills as high as it is, or higher, west of it, but about northwest from it there are some high hills there, high lomas and high cerros.

"(Mr. POPE:) How far west did you say it extended? A. It may extend for a mile, or three-quarters of a mile."

It is submitted that the theory of the Government that the Puerto de Gallardo is the pass mentioned in the title paper as the northeast corner is wholly opposed to the evidence, which, as above set out, shows that near this Gallardo pass there is no "small hill that is to the right (or south) and near two larger ones."

The witness Flipper further testified as to the topography at the point taken by claimants as the east center as follows (p. 45):

"Q. Do you find a hillock on the road to the pass through which passes the old road from Santa Cruz to San Bernardino? A. There is a high hillock on that road, but there is no high hillock on that map (referring to tracing of the international boundary line survey). I want to be understood as saying that there is a high hillock to the right. There are two roads from Santa Cruz to San Bernardino; which of these two roads do you refer to?

"Q. The one marked on the international boundary line?

A. There is a high hillock to the right of that road; it is very plain.

"Q. Please state whether that high hillock is correctly represented on the Bonillas map? A. It is correctly represented.

"Q. Did you find a pile of loose stones with a cross? A. It might be called a cross or a crescent or a T, according to one's imagination."

The court will see that it would be simply impossible to identify more clearly or fully a place exactly answering the call of the title paper for the east center monument. Here is the pass, the road through the pass, the high hill to the south, and the monument on top of the hill.

The Government contends, as heretofore stated, that the pass taken by the claimants as the east center is in reality the northeast corner, and that the east center is at a so-called Misa pass. We have heretofore called the attention of the court to the fact that the distinguishing feature of the call for the east center is a high hill which is to the right or south of the pass where the old road passes from Santa Cruz to San Bernardino.

The extended attempt of the Government to prove a Misa pass and some road through it is without effect, as we submit, because the so-called Misa pass is not shown to have any high hill to the right of it on which is a monument. The topography of the alleged Puerto de la Misa was testified to by Mr. Flipper as follows:

"Q. In the vicinity of this Puerto de la Misa, I will ask you to state whether or not there are any lomas? A. As you come out of the pass going westward there are any number of lomas lying to the west; also in the mouth of the pass, but outside of the pass.

"Q. Are there any lomas lying to the right of this pass as you go eastward? A. There are; there are lomas to the right of them and lomas to the west of them.

"Q. Are there any lomas to the right of the road coming from the west going through that pass? A. There are; yes, sir; and in the immediate vicinity of that road north of the pass."

All this utterly fails to show that the Misa pass, so called, has to the right or south a high hillock, with a monument on it. The distinguishing feature in the call for the east center monument is the "high hill which is found on the right of the pass through which passes the old road from Santa Cruz to San Bernardino." The pass is not identified with reference to the road, but the road is identified with reference to the pass to the right of which is the high hill with the monument. Let it be assumed, for the purpose of the argument, that all that the Government claims as to a road through the so-called Misa pass is true, and that the question to be determined is whether this road or the road laid down on the international boundary map and other maps is the road spoken of in the title paper. This question will be answered by determining which is the pass to the south of which is the high hill with a monument on it, and the uncontradicted evidence is that the pass taken by the claimants answers this call, and that the pass assumed by the Government does not.

We submit that the evidence as to the Silla pass, the Gallardo pass, and the so-called Misa pass establishes the following facts:

1. Near the Gallardo pass there is no "small hill that is to the right (or south) and near two larger ones."

This Gallardo pass, therefore, does not answer the description of the northeast corner.

2. The Gallardo pass exactly answers the call for the east center monument.

3. The so-called Misa pass does not answer the call for the east center monument because, according to the evidence, it is not the pass to the right or south of which there is a high hillock.

As to this alleged Misa pass, when the testimony is examined it will be seen that the only information which Messrs.

Flipper and Tipton got as to this appears to be from a Mr. Montano. Mr. Flipper had been at the place only occasionally. Mr. Bonillas, on the contrary, testified that he was familiar with the vicinity, having made other surveys. He said :

"I have been through that country repeatedly, and I think I am thoroughly acquainted with that country. I have been making surveys in there on both sides, on both valleys, by the Agua Prieta valley and the San Bernardino valley, and had occasion repeatedly to go into these mountains and others in connection with the making of surveys in the southern part of the San Bernardino valley and the Agua Prieta valley. I came across these mountains on horseback several times.

"Q. In your investigations in that country, making surveys or otherwise, did you ever hear of any pass called the Misa pass? A. No, sir. I never heard of a pass by that name.

"Q. Are you familiar with that part of the country which is identified by the witness Flipper, or termed by the witness Flipper, the Misa pass? A. I am perfectly familiar with that country.

"Q. What is that country termed by the witness Flipper the Misa pass; is it a separate pass from the Gallardo pass? A. I do not think so, because it is not a pass that goes from the southeastern side; there is a depression running from Gallardo to the south; I think it is continuous to this point which is now called the Ceniza pass and which is at the north end of the Ceniza or Perrillo mountains."

We ask the court now to consider, in addition to the facts heretofore presented as to the topography of the country at Gallardo pass, the additional further testimony. It is most confidently submitted that the court will find that the weight of the evidence is unquestionably that there is no such Misa pass. Mr. Flipper testified at one place that it "might be called a narrow valley instead of a pass."

JOHN H. SLAUGHTER testified that he had lived in Cochise county since 1879; that he had been sheriff of Cochise

county for four years; that he knew the place called Gallardo peak; that the road used by people to cross the Perrillo mountains going from the valley to the east to the Agua Prieta comes right by his ranch and right south of Gallardo; that he had traveled over the country represented by the Bonillas map very often; that the Perrillo mountains are crossed by people going from east to the west or west to the east south of Gallardo; "that is the only road that I know of;" "they come to San Bernardino and go out by Gallardo; that is the only one I know."

"Q. That is the only pass through these mountains as far as you know? A. Yes, sir; for vehicles south of this Gallardo pass and between that and the Ceniza springs; south of the Gallardo there is no wagon road that I know of unless it is a timber road.

"Q. Has there ever been any wagon road used south of the Gallardo by the people passing the mountains? A. Not that I know of.

"Q. Did you ever hear of a pass called the Misa pass? A. No, sir.

"Q. As far as you know, people in wagons crossing these Perrillo mountains cross through this Gallardo pass? A. Yes, sir.

"Q. They all cross there? A. Yes, sir, with their wagons; it is east of these mountains here.

"Q. About how wide is this Gallardo pass, the whole pass? A. It would be three or four miles, anyway.

"Q. And south of what you call the Gallardo pass you say there is no pass in the mountains where people cross with wagons, between that and the Ceniza springs? A. None, unless it has been lately made there. I have never seen any across it. There is no wagon road; the only road that I know of is a wood road over there from the Mescal ranch, unless there has been some made for hauling water or timber."

On cross-examination the witness was asked:

"Q. Now is it not true that northeast of the Puerto de la Ceniza, and about two and a half miles south of Gallardo peak, there is an opening in the mountain range through

which you can go on horseback or in a wagon? A. I do not know about it.

"Q. Do you know any place called the Puerto de la Ceniza? A. No, sir; I do not know any except at the Ceniza springs."

On redirect examination the witness testified:

"Q. You say that a man on a horse can cross nearly any place in the mountains without trouble, but you know of no wagon road crossing these mountains except the one that you testified about in this Gallardo pass? A. I know of no other crossing in the mountains."

Mr. Bonillas further testified:

"There is no wagon road there (at the so-called Misa pass) now, and there has never been a wagon road going through that point to the east of the San Bernardino valley. I have been there too many times on horseback and on foot, and no wagon road can go through there unless some money was spent to make it.

"Q. What is true, if you know, of any wagon road going through the pass which has been described as the Puerto de la Ceniza? A. There is no such a thing as a wagon road there, and never was one.

"Q. Do you know as a matter of fact how the people of Sonora who are east of the Perrillo mountains and some distance, say, from five to ten miles, south of the line, cross the Perrillo mountains to come west? A. They travel to the north to go to Bisbee, and if there were such a road through the Ceniza pass, or through this Misa pass, these people and the people living in there would save perhaps ten to twenty miles to go to the Agua Prieta country and thence to Bisbee if they could go through any such a pass as that. They all go around by San Bernardino and through the Gallardo pass. * * * I know that positively to be so. * * * No road goes across this depression to the Agua Prieta and San Bernardino valleys except to go through Gallardo pass. * * * I never heard of the Misa pass."

On cross-examination he testified:

"There is a road running out to the Agua Prieta valley

from the point that you call the Puerto de la Misa, but not east to the San Bernardino valley.

"Q. And you say there is no pass running from the main range of the Perrillo or Ceniza mountains between this line here and the north end of these mountains? A. No distinct pass, unless it is the same as the Gallardo pass: there are low hills in there.

"Q. What was your statement about people coming from Bavispe? A. They come in from the San Bernardino valley and then through the Gallardo pass and from Agua Prieta to Bavispe."

EDWARD CAMOU testified that he was fully acquainted with the location of Agua Prieta, the Perrillo or Ceniza mountains, and the peak called Gallardo, and of San Bernardino, Arispe, and other points.

"Q. Did you ever cross at the pass called the Gallardo pass? A. Many times.

"Q. State whether there is a traveled road over that pass? A. Yes, sir.

"Q. Where is that road with reference to the Gallardo peak? A. The old road is on the north of Gallardo and the new road is on the south, just one side of the peak.

"Q. Do you know as a matter of fact where people from Bavispe and Cuquiarachi, Batepito and Bacuachi cross the Ceniza mountains in wagons going from these places? A. At that pass of Gallardo; that is the only place.

"Q. Is there any wagon road south of the Gallardo pass except roads that are used for wood and for the distillery crossing these mountains? A. No, sir; not one.

"Q. Did you ever hear of any place there called Misa pass? A. No, sir. There is not such a thing as that, as we know; there is what is called the Agua de la Misa. That is above two miles from there south (of the Gallardo peak)."

"Cross-examination:

"Q. You say there is no road through the Perrillo or Ceniza mountains going from the Agua de la Misa? A. No such road; no, sir; no such road.

"Q. It don't cross the hills? A. No, sir; impossible.

"Q. There is no wagon road in there at this time? A. Never; no.

"Q. Do you know where this old overland road that is laid down here is located? A. Yes, sir.

"Q. Is that the road that is traveled going to San Bernardino? A. Yes, sir.

"Q. In going from Fronteras to San Bernardino, how do you go coming from the Black Water valley, and in going from Cabullona? A. You could go different ways; you could go on the San Bernardino river.

"Q. And generally that is the road that they are accustomed to go or use? A. They go through Gallardo.

"Q. And go round by the Agua Prieta valley to the old overland road that Mr. Bonillas has got on this map? A. Yes, sir.

"Q. How do you mean to say, then, that there is no means of getting through these mountains south of this Gallardo pass and between that and the Puerto de la Ceniza? A. Impossible with wagons.

"Q. You are sure of that? A. O, sure; no wagon road; never will be; no, sir.

"Q. You say you have been through this Puerto de la Misa? A. Yes, sir.

"Q. How did you go? A. On horseback.

"Q. On a trail leading through the hills? A. Yes, sir.

"Q. There is an old wagon road there? A. There never has been.

"Q. Is it not true after coming through the Gallardo pass that you cross a hill to go over into this pass just a little; there is a good road there? A. Yes, sir; wagons for posts that are for fences, but for no other purpose.

"Q. Then this wagon road that runs from Agua Prieta—that does not cut through the Perrillo mountains at all; I am talking about a wagon road that runs south of Mr. Bonillas' road; that does not cut the Perrillo or Ceniza mountains at all? A. No, sir.

"Q. You swear to that? A. Oh, yes, sure."

COLIN CAMERON testified that he had lived in the southern part of Pima (now Santa Cruz) county, immediately to the north of the line of Sonora, since 1882; that he had

traveled over Pima and Cochise counties, Arizona, and the State of Sonora, Mexico, more or less continuously since 1883.

"Q. Do you know a road going from Santa Cruz to San Bernardino? A. Yes, sir.

"Q. How does that road go and where does it pass the Ceniza mountains? A. It goes to the north of the Ceniza to a gap in that mountain.

"Q. Do you know the name of that gap? A. Yes, sir; where the wagon road goes through Gallardo.

"Q. Have you ever been through that pass; if so, how often and when? A. I have been through that many times on horseback and wagons.

"Q. How does that road going to San Bernardino lie with reference to that Gallardo peak? A. The present road goes through on the south side, the present traveled road; most of the travel, at least.

"Q. You look at that pass from the west in approaching it? A. Yes, sir.

"Q. Is there any resemblance to a saddle? A. No, sir; it is a great big peak standing up against the mountains; there is nothing there to indicate a saddle.

"Q. Did you ever hear it called Saddle or Ceniza pass? A. Never did. I don't think it ever was called that.

"Q. Do you know any pass in the Ceniza mountains or elsewhere called Misa pass? A. I do not.

"Q. Did you ever hear of any pass called the Misa pass? A. Never did.

"Q. Have you ever crossed these mountains south of the road passing by Gallardo peak? A. Horseback I have.

"Q. Any other manner? A. No, sir.

"Q. State whether or not it is possible to cross them in a vehicle? A. No place south of that wagon road until you get away down here to the river, many, many miles south.

"Q. Please look at the point designated on that map by the letter X and state whether or not it is possible to cross these mountains with a wagon entering at the point called X; if so, where the wagon must come out * * * I am speaking of going to San Bernardino? A. You could not do it at all.

"Q. Why not? A. They would go up here to this road

where they could go, and not attempt to go where they could not.

"Q. Have you ever been to the southeast of Gallardo and in the State of Sonora to the towns of Arispe and others there? A. Yes, sir.

"Q. Do you know as a matter of fact what road is taken by persons from these places and others in the same general locality to go to Bisbee? A. Yes, sir.

"Q. Where do they cross the Ceniza mountains? A. Through the Gallardo pass.

"Q. No other place? A. Not with a wagon; no other place; no, sir.

"Q. When did you say you first crossed these mountains? A. In 1886; I may have been across there in 1883, but I do not now recollect.

"Q. When were you at that place where the trail (the trail south of Gallardo pass) comes out? A. The last time I was there was in the fall of last year, September; I was bringing a bunch of cattle to see whether we could bring the cattle over or not.

"Q. What was the result? A. It was impossible to bring them over; no man would attempt to move a herd of cattle over there.

"Q. For what reason? A. The road is so rough and it would take too long; it is just a trail for horseback.

"Q. Did you or did you not know whether at the time you were first at the place marked X there was any wagon road there or wagon tracks? A. No wagon tracks, if this represents the trail; no wagon track going through; it is utterly impossible for them to go through.

"Q. Did you state whether you know, as a matter of fact, how people from Batepito go to Bisbee? A. Yes, sir; they go through the Gallardo pass.

"Q. How do the people travel going through this pass? A. They go from Santa Cruz to San Bernardino, and from San Bernardino to Lampito, and from Lampito they follow this road that is marked down here, and then go south of the Gallardo pass to San Bernardino."

On cross-examination, the witness testified that he was familiar with the topography of the country about which

he had been testifying; that he had ranched south of it since 1888, and had passed and repassed it time and again.

"Q. People going from Fronteras or Cabullona to San Bernardino, going up the Agua Prieta valley and going across the mountains on the trail which you have just described as being two and a half or three miles south of Gallardo and comes into the road at Gallardo, would get a shorter way than going north up the valley to this overland road, would they not? A. If there was a way to get through the mountains, they would."

The witness further testified that he had a very small interest in the Agua Prieta grant, and that as he has gone along he has looked at it and asked about it and inquired for the names from persons that have knowledge of it, and that he was entirely familiar with it.

While a good deal is said in the argument of the Government as to a road through the so-called Misa pass, it seems to be proved even by the Government witnesses that such road was merely a branch of the main road through Gallardo, and the testimony was uncontradicted that such road is not the road used by travelers now, though, if it could be used, it would effect a considerable saving. The failure of anybody to use the road would seem to be the best proof imaginable that there is no such road.

Mr. FLIPPER testified:

"Q. How far did this road (through the Misa pass) go going east? A. It joins that road at Gallardo pass, and then on to San Bernardino."

Mr. TIPTON also testified to the same fact.

"Q. Now you have testified in your former examination as to the fact that this road going through the Puerto de la Misa joins another road going through the Gallardo pass in the vicinity of Gallardo peak. I believe you have testified to that fact. A. Yes, sir; I have."

The Government, on the trial of this case, made elaborate efforts to prove the grant was originally located in Mexico, and we suppose that the same attempt and same arguments will be made in this court. The more the location of the monuments is discussed the clearer it is that claimants' map is correct, and we therefore refer to some positions taken by Government counsel in their elaborate brief in the lower court. The paragraphs hereinafter mentioned refer to that brief.

The Government dwelt at length on this question of where the old road was which is mentioned in the survey of 1835. Its whole case seems to depend largely on this.

Mr. Flipper so admitted, as follows:

"Q. Look at this Cochise County map. Is the road from Santa Cruz to San Bernardino on this map the same as on the Bonillas map and international boundary line? A. So far as I can tell it is the same road; I believe it to be the same road.

"Q. If the road laid down on this map is the road described in the original title papers, then that is the east center monument, and your theory is entirely wrong on the supposition? A. Yes, sir; if that is so, I am entirely wrong on that supposition.

"Q. I will show you a sketch, plat of the lands of the Messrs. Camou situate in the district of Arispe; does not that map show any road from San Bernardino to the Gallardo pass? A. It does.

"Q. And if that road correctly represents the road at the time this title was issued, your theory is entirely wrong, is it? A. Yes, sir."

The Government put the issue on this point as follows (paragraph 77i): "Even if in 1835 there was a trail from Santa Cruz to San Bernardino *via* Gallardo—even if the trail between these points went thus—the question still remains. Where was the 'old road' or 'old trail' mentioned in the survey of 1835"?

The title paper answers this question. It makes an explicit

statement as to where the road was. It was through the pass "to the right (or south) of which is a high hill, on which was placed a heap of stones."

Where is such a pass? All the evidence is that this is at Gallardo pass and nowhere else. We have detailed the testimony in full on this point.

The road now known as the old overland road, as it is designated on every map that was produced, is through the Gallardo pass, and it is proved that on the south side of this pass there is a high hill with a monument on it. It is therefore urged that the present road correctly represents the road referred to in the title, because each is unmistakably located with reference to the high hill south of the pass. We make this statement without any qualification whatever, because this fact is testified to by every witness, Mr. Flipper's statement being "There is a high hillock to the right of that road (the one marked on the map of the international boundary survey and the Bonillas map); it is very plain," and on the top of this hillock, according to all the testimony, including that of Mr. Flipper, there is a monument. It is not easy to imagine how there could be clearer or fuller proof as to the identity of this pass and the high hill south of it and the monument on the high hill and the road through the pass.

The Government's position is that the "old road ran through Misa pass, and the east center of the pass is thus there." The answer to this contention is that there is no proof of a high hill to the south of this pass with a monument on top of the hill. The very object, namely, the high hill, by which the pass and road are identified, is absent from the Misa pass. In connection with its discussion as to its road, the Government speaks of "matter of great probability" and urges that its theory is "entirely reasonable and probable." But the location of this road does not depend upon probability. It is described with reference to a fixed fact, the high hill south of the pass. In

the absence of all proof of such a high hill south of the Misa pass, this Misa pass must be rejected.

This is the identical argument that the Government uses at the end of its paragraph 77c, where it says: "It (the monument claimed to be the north center) is thus a monument according entirely with the *expediente* against no monument at all in the Bonillas survey and must thus be accepted by the court as the north center." Using this argument of the Government, we submit to the court that the monument on the top of the hill south of Gallardo pass is a monument according entirely with the *expediente* against no monument at all shown to exist on any high hill south of the Misa pass, and this high hill south of Gallardo must therefore be accepted by the court as the east center. If this is so, the grant is absolutely fixed by the Bonillas survey.

In paragraph 77k the Government counsel say that—

"The position of the southeast corner is uncontroverted. It is claimed to be and was found at Ceniza pass, and the Bonillas map shows it to be there. The Government after investigation was constrained to acquiesce in that position. The *expediente* description of the location of this southeast corner is as follows: 'At the foot of the *first* pass which is to the right of the point where the cross monument of said course ended.' The southeast corner is thus at the first pass south of the east center monument. Suppose, however, that we locate the east center where the claimants have put it, at Gallardo peak; there will be two passes between it and the southeast corner, one on the south side of Gallardo along which the wagon road to San Bernardino now runs, and another through the Misa pass, through which a wagon road also runs. But as the *expediente* says the southeast corner is at the *first* pass south of the east center monument, the Bonillas location must be rejected. * * * The truth of the matter is that Bonillas either intentionally or otherwise overlooked this pass in making his survey and was ashamed to admit it on the trial. With the positive proof of its existence now before the court, his survey crumbles and falls."

The trouble with this argument is that the evidence shows that the so-called Misa pass is only a part of the Gallardo pass, and that there is thus only one pass at Gallardo. Mr. Flipper testified that the so-called Misa pass "might be called a narrow valley instead of a pass." Mr. Tipton testified that the road going through the so-called Misa pass at its eastern end joins the road passing through Gallardo pass in the direction of San Bernardino. This was all the evidence on the part of the Government, unless we include the attempt on the part of the writer of the Government brief to have his statement in paragraph 77j taken as evidence. That statement is, "That such a pass exists as the Misa pass is abundantly shown by the proofs. The writer rode through it four months ago in a carriage with special agents Tipton and Flipper." The testimony in opposition as to the Misa pass was that of Bonillas, Camou, and Cameron, each of whom was far more familiar with the topography of the country than the witnesses of the Government, and in addition to the evidence of these gentlemen Mr. Slaughter, a wholly disinterested witness, whose familiarity with the country was perhaps greater than any other person who testified, swore that "Gallardo pass is three or four miles wide anyway." This evidence shows that Misa pass is simply a part of the Gallardo. Assuming this to be the case, then it is a matter of pure mathematics that the claimants' map is correct, because the first pass south of Gallardo will be the Ceniza pass and the first pass north of it the pass originally called Saddle pass, now known as College peak.

The Government further says that "if, however, the east center be located to the right of Misa pass," etc. Our constant objection to this is that no high hill with a monument on it has been proved to be south of the so-called Misa pass, and that therefore there is absolutely no ground for the Government's theory.

The argument of the Government which we have above quoted in full seems to be contradicted by the very Mexican

survey on which the Government chiefly relied. We refer to the one dated "Marzo, 8, '99," with the seal "Juzgado de Distrito de Sonora. Guaymas." This map lays down the east side of this grant as the "Sierra del Perrillo." The northeast corner of this map is worded "Cerro Gallardo, en el Puerto de la Silla." According to the Government's theory, the Misa pass lies between the Gallardo pass and the southeast corner, but this map not only makes no reference to any Misa pass, but designates the southeast corner as "en el Primer Puerto," "in the first pass." According to this map, the first pass south of Gallardo is at the southeast corner, just as the claimants have contended.

When the Government says (par. 77*g*) that "the same survey (the modern Mexican survey) fixes the northeast corner at Gallardo, just as contended by the United States," it seems to misapprehend the whole case. The title paper nowhere says that Gallardo is in the Saddle pass. Gallardo cannot be the northeast corner, because that corner is identified by the title paper as the pass to the right of which is the "small" hill near two larger ones, and Gallardo and the hill northwest of it are "high" hills. The pass to the right of which is the "high" hill is the pass where the east center monument is located, and thus the location of Gallardo unmistakably fixes the east center monument. Whatever mistakes may have been made in the names of these passes, as they are called at the present day, and whatever surveys may be made by Mexican officials, and whatever theories may be advanced by the Government, the calls of the expediente will remain too clear to be confused. The northeast pass is identified by the "small" hill to the south. The east center pass is identified by the "high" hill to the south. This "high" hill is at Gallardo. Therefore the later Mexican survey in locating Gallardo on or near the international boundary line proves that the east center monument is there, and this disposes of the case so far as the location of the grant on the earth's surface is concerned.

Mr. Flipper's belief as to this grant was stated by him as follows:

"I believe the loma identified by Mr. Rosas as the north center monument is where the original north center monument was; I believe that the Puerto de Gallardo is what was known at that time as the Puerto de la Silla. I believe that the Cerrito Pequeñita was the northwest corner. These three lines fix the north line of the grant," and according to this theory the grant would be in Mexico.

As to two of these monuments we have shown how, in our opinion, they fail to conform to the calls of the title. Mr. Rosas' north center monument is the one identified by Mr. Oury as having been built to help locate the international boundary line. The Puerto de Gallardo absolutely fails to conform to the northeast call of "a small hill that is to the right (or south) of the pass and near two larger ones." Moreover, each of these monuments as taken by Mr. Rosas is out of all proportion to the shape of the grant, as heretofore shown.

The northwest corner monument was identified by Mr. Bonillas as follows:

"Standing at the northeast corner monument above described, and looking towards the west in a direction at right angles to the course of the valley, two or three small hills can be seen near the foot of the Mule mountains. I followed the course of the valley, which is twenty miles wide at this point, finding the northwest corner monument upon one of them. These little hills are formed entirely of limestone, rising in the plain about a mile from the foot of the Mule mountains, there being no others to the north, and for a considerable distance to the south."

As to this northwest corner, Mr. Flipper testified as follows:

"I know there is a small hill in that vicinity (referring to the point designated on the Bonillas map as the northwest corner), but as to the monument I do not know."

As to the northeast corner, Mr. Flipper testified thus:

" Q. Do you know what is known as, what has been testified to as, College peak by Mr. Bonillas and his map filed by him and his testimony taken at the last session of this court?
A. Yes, sir."

We deem it not amiss again to ask the court to notice the fact that the Government witnesses refrained from going to either the northeast or northwest corner as taken by the claimants, though a month before the trial they had been specifically informed by the testimony and map of Bonillas where these points were claimed to be, and that, as testified to by Bonillas, they answered in every minute respect the calls of the expediente. Why, we ask, did the Government witnesses not go to these monuments? Government counsel state, as heretofore quoted, that "the position of the southeast corner is uncontroverted. It is claimed to be and was found at Ceniza pass, and the Bonillas map shows it to be there. The Government after investigation was constrained to acquiesce in that position." It seems a pity that the Government did not also investigate as to the northwest and especially as to the northeast corner as shown on the Bonillas map. It might have been that after investigation the Government would have been constrained to acquiesce in the position of those monuments also, in which case there probably would have been no need for arguments based on probability or conjecture. If Mr. Flipper had gone to the northwest monument, he could have testified whether or not the small hill which he admits to be in that vicinity had on it a monument as testified by Mr. Bonillas. If so, it would have corroborated Mr. Bonillas, and if not, it would have raised a direct question as to the identity of this northwest monument. So, if Mr. Flipper had gone to the pass taken by claimants as the northeast corner and had testified that there was a small hill to the right of that pass and near two larger ones, this also would have been corroborative, or if

he had testified that at that pass there was no small hill to the right and near two larger ones, this would have been evidence directly tending to impeach the accuracy of the Bonillas survey as to the northeast corner. In either event the evidence would have borne directly on the most important questions before the court.

Whether the Government was unwilling to investigate the northeast monument for fear that it would be constrained affirmatively to acquiesce in the location given it by claimants we do not know, but the fact is that the Government did not offer any evidence whatever tending to contradict Mr. Bonillas' testimony that the monument taken by him answers the call of the expediente in every particular. It seems to us, as we have heretofore submitted, that in deciding according to the weight of the evidence, the court will be constrained to accept Mr. Bonillas' location of this monument, because there was no evidence *contra* on this point, and the witness was not impeached.

NORTH CENTER MONUMENT.

As heretofore stated, this monument is not at any conspicuous point in the topography of the valley, but was located with reference to the Silla pass, the northeast corner. The description as to the north center is as follows:

"Returning to the center, the direction of the north was taken, and going up the valley there were measured 100 cords which ended on a very small hill, fronting towards the east with the pass called La Silla, having ordered a heap of stones to be placed there and a cross as a monument."

The testimony shows that going up the valley a distance of 2.96 miles from the center there is at a point $\frac{54}{100}$ of a mile south of the international boundary line a small monument of stones, and it is argued by the Government that this is the north center monument. No witness testified as to it,

and Mr. Flipper positively refrained from committing himself to it. As to this monument he testified (pp. 52, 53):

"A. I testified that I did not pretend to identify that as the original monument. It is very possible it is the original monument.

"Q. And you believe that is the place? A. Yes sir.

"Q. Will you state why you believe that is the place? A. Because it agrees with the description in the original title papers.

"Q. Then your assumption or theory is based on the supposition that the point described by Mr. Bonillas as the east center monument is in fact the northeast monument? A. That is my theory.

"Q. And if it is true, as a matter of fact, that the northeast monument of this grant as originally surveyed is what is termed the Silla pass, the northeast corner as laid down on Bonillas' map, you would of course, have a different theory? A. If that is true, why certainly.

"Q. If the old road from Santa Cruz to San Bernardino is correctly represented on this international boundary map, is it not true, in your opinion, that the monument on the loma south of that is the east center monument of this grant? A. If this is the old road referred to in the old title paper, then that would be true."

We have proved, it seems to us, that Mr. Flipper's theory is incorrect, and that the northeast corner monument is correctly designated by Mr. Bonillas as the others were.

This pile of stones which the Government sought to take as the north center monument was proved to be an entirely different one.

Mr. Oury's notes dated October 1, 1892, as to this monument are as follows:

"Returning to the center at Agua Prieta, I traveled up the valley carefully searching over every hill for a monument of stones or the remains of one. At a point about three and one-half miles distant, on the top of a small hill, I found a mound of rock, well built and still standing, which was evidently quite recently erected, and which my guide informed me he had helped to build there as marking the in-

ternational boundary line between the United States and Mexico. Its location, as I subsequently determined, from my survey, is very nearly on this line."

The point taken by the Government as the north center monument is located with respect to the international boundary line (testimony of Mr. Flipper) as follows: "It lies to the south of the international boundary line fifty-four-hundredths of a mile."

We submit the foregoing as affirmative proof coming through Mr. Oury from the very man who had helped build the monument, which is, in fact, very nearly on the international boundary line and would serve the purpose of marking that line, as was its purpose according to the above statement.

But in addition to what we have heretofore said, the attempt of the Government to place the northern monuments south of the international boundary line give the grant a shape so unusual and improbable, in view of all the facts, that the theory seems untenable, not to say laughable. We invite the attention of the court to this feature as shown by the description of the expediente.

From the center to the south center is stated to be 59 cords, and from the center to the north center 100 cords—approximately twice as far. From the southeast to the east center is 59 cords, and from the east center to the northeast 100 cords—approximately twice as far. The grant should, therefore, present an appearance where the north center is approximately twice as far from the center as the south center is.

The center of this grant is fixed beyond doubt, and the south center as taken by Bonillas is conceded to be absolutely correct. From the center to the south center, stated to be 59 cords, is 32,470 feet, or a little over 6 miles. According to the same proportion, from the center monument to the north center should be a very little less than 10 miles.

From the east center, as taken by the Government, to the southeast is from 5 to 6 miles. According to the same proportion, from the east center to the northeast should be just a trifle short of 10 miles.

The point which the Government is urging as the north center is, however, as shown by the testimony of Flipper, only 2.96 miles from the center, and the northeast monument, as claimed by the Government, is estimated to be only 2 or $2\frac{1}{2}$ miles from the east center monument. According to Mr. Flipper, it is "approximately between 2 and $2\frac{1}{2}$ miles."

The title paper and evidence show that the valley both north and south of the center monument is not broken, but almost level, and thus capable of accurate surveying (see paragraph 77*e* of the Government's brief), and that the distance from the center to the south center was measured and counted, and the distance from the center to the north center was also measured and counted.

According to the Government's theory, 59 cords measured south are over 6 miles, while 100 cords measured north are less than 3 miles. The 59 cords measured south are twice as far as the 100 cords measured north.

We submit that this is so far improbable that it should be rejected. It is not to be believed that the same men measuring and counting at the same time would make such a preposterous discrepancy. The errors in measuring were errors making the distances longer than they were in fact. No case has come before this court where the distances as stated are shown to be shorter than they really are.

The place taken by claimants as the northeast corner exactly answers the call of the expediente, as will be shown when we refer to the evidence. In addition to this, its location is in proportion to the calls set out in the paper. As shown by the Bonillas map, it is twice as far to the north of the east center monument as the southeast corner is to the south of that monument.

The theory of the Government is that the northeast corner was placed at a point only a third as far to the north of the east center as the southeast corner is to the south, though the title states that the southeast corner is 59 cords south, and the northeast corner is 100 cords north.

The Government will doubtless at once concede the force of this argument, in view of the fact that it has adopted in its brief before the lower court the identical line of reasoning (see paragraph 74*g*). Counsel there argue that measurements "should, allowing for slight discrepancies, be the same, or approximately the same," and call attention to a "difference of over six miles in the same measurement run by the same surveyor at the same time," and argue that the monument which was then under discussion should not be taken at a place which is not in proportion to the measurements.

The facts in the case which the Government was then discussing seem a sufficient answer to the discrepancy therein, but the argument itself is a perfectly legitimate one, and we adopt it as fully as the Government did. If it is applied to the facts in this *Agua Prieta* case, it would seem at once to show that the Government's theory is untenable. The Government is asking this court to adopt a theory which assumes that the same surveyor at the same time would say that 59 cords to the south amounted to over six miles, while 100 cords to the north, in the same level valley, amounted to less than three miles.

In all the literature of the land-grant subject, this theory in the *Agua Prieta* case seems to be the strangest. Errors in measuring and calculating were certainly made, but there has never yet been any suggestion that in a level country the surveyor would with the same measure make 100 cords less than half the distance of 59 cords.

A reasonable theory is, to use the language of the Government, that the measurements "should, allowing for slight discrepancies, be the same or approximately the same." The measurement from the center to the south

center was the first one made. These 59 cords are, as a matter of fact, as heretofore stated, over six miles. Taking this as a standard, and making the measurement to the north to correspond proportionately, the north center should be almost 10 miles from the center, and this is very nearly the distance from the center on the line in the Bonillas map which joins the northeast and northwest corners.

The same reasoning applied to the northeast corner with reference to the east center will show that the place taken by the claimants is in proportion to the measurement from the east center to the southeast. On the other hand, to take the place which the Government assumes as the northeast makes the grant incomprehensible on any theory which will accord with the experience derived from former grants. The northeast corner will be only 2 or $2\frac{1}{2}$ miles from the east center, while the southeast is five or six miles from the same place, and this in a grant where the southeast is said to be 59 cords from the east center and the northeast 100 cords from the same place.

VII.

The lower court further says:

"The Mexican government in construing the grant in this case held it to be a sale by quantity, and the evidence shows that in a proceeding to denounce the demasias, the cabida legal, $6\frac{1}{2}$ sitios were laid off by the survey to the owners and the demasias sold and patented. It is true these proceedings were subsequent to the treaty and not binding on this court, but it is quite persuasive and shows the construction put by the officials of Mexico on the law in force at the date of the sale in this case."

As said by this court in *U. S. vs. Yorba*, 1 Wall., 412, 423:

"No proceedings in Mexico subsequent to the treaty can affect rights in the United States at the date of the treaty. The rights asserted by the inhabitants of the ceded territory depend upon the concession made by the officers of the

government having at the time the requisite authority to alienate the public domain, and not upon any subsequent declarations or actions of Mexican officials."

If the construction of this title paper were doubtful, the action of the Mexican authorities might be entitled to consideration, but we submit that there is no room for doubt as to the intention of the parties. We are trying this case before the Supreme Court of the United States, not before Mexican officials, and this court must put its own construction on the papers. The construction put upon the instrument by the Mexican officers at the time of the issuance of the grant is, as we have submitted, entitled to great weight, because this contemporaneous construction must outweigh any construction arrived at years after the treaty.

The fact is that the Mexican authorities in their resurvey of this grant wholly misunderstood or misstate the calls of the title paper. On page 217 of the record herein the Mexican surveyor states from the point assumed as the north center monument of this Agua Prieta grant the northeast corner monument was found by "measuring 13,010 meters to the summit of Gallardo hill (cerro) in Saddle pass, which the titles call for."

But the titles do not call for a high hill in Saddle pass. They call for a very small hill in that pass as the northeast corner and for a high hill in the east center pass. This call of the Mexican surveyor is the call for the east center monument, and in taking it as the northeast corner he makes a palpable and fatal mistake. Saddle pass with the very small hill to the south of it is many miles north of the boundary line, as shown by the Bonillas survey and by all the testimony, while the Gallardo hill or cerro marks the east center monument.

The later Mexican proceedings cannot change the calls of the title or the topography of the country, and it needs no elaboration to show that this subsequent attempt of the Mexican authorities to locate the grant is wrong in toto.

The Mexican proceedings were discussed at some length by the Government in the argument of this case, and in the Government's brief filed in the lower court is quoted the following from a letter of Camou of July 15, 1880 :

"Finally there was no land in American territory, as we believe."

As to this the Government counsel say :

"This admission by claimant Camou's predecessor in title is binding on him, and not only have the owners of this property thus declared that none of it is in the United States, but that this is the status of the property has been agreed upon by the government of Mexico and the owners in a proceeding for the denouncement of the *denasias*."
* * * "The acceptance of this survey (the Mexican survey of 1880) and this patent without objection but with every evidence of acquiescence and approval, forever estops the Camous or those deraigning under him to assert that that survey is wrong."

It is hard to believe that this argument is expected to be taken seriously. Could Camou and the government of Mexico bind the United States in any way in that proceeding? If the Mexican government had by survey declared that the whole of the grant was in the United States, would our Government have been estopped to deny such a survey? Can the Mexican government by any proceeding whatever give to its decrees any extraterritorial effect? If part of this grant was, as a matter of fact, located in the United States at the time of the treaty, can the government of Mexico, years afterward, in any way affect the part in our country? If, as claimed by the Government, the Mexican proceedings are *in rem*, is not the jurisdiction in Mexico limited to such part of the *res* as is located in her territory? If the proceedings are, as claimed by the Government, *res judicata* in an action *in personam*, is not the adjudication confined to the land in Mexico? Certainly these questions answer themselves. As

against the Mexican government, Camou may be estopped to deny that the survey was wrong, but whether he is or not is perfectly immaterial to this proceeding. The government of Mexico has as much to do with the part of the grant which is in the United States as this court would have with the part which is in Mexico.

The record in *Camou vs. U. S.* shows that parties in interest, as early as 1862, claimed that these lands were "a part within the American lines (p. 113)." On page 125 the statement is made, "a large portion of which (lands) are situated in Arizona, United States of America." The heading given on page 124 (all in the record in the *Camou* case) is "In reference to the lands of San Pedro, Territory of Arizona." On page 129, referring to this very *Agua Prieta* grant, the statement is "The largest portions of which lands are situated in Arizona Territory of the United States."

As to these Mexican proceedings, it seems an elementary principle that Mexico may do quite as she pleases with lands in her own country, but that no such proceedings can in anywise affect rights in the United States which were vested at the time of the treaty. Whether there were such rights depends on the state of affairs existing at the treaty, and not on admissions claimed to have been made years afterwards. We have adduced the evidence proving, as we think, perhaps as clearly as any survey which has come before this court, that the tract of land as originally surveyed is located in part in the United States, and is correctly designated by the Bonillas survey. The legal rights of claimants are, as we submit, secured by the fact that this was a grant of the whole of a tract by name. In addition to this, we have made a tender by virtue of which we are entitled to the *demasias*, if the court should be of the opinion that there are any *demasias* in the grant.

One point still remains: the argument of the Government that claimants have no title sufficient to invoke the jurisdic-

tion of this court. The copy of the deed of sale from the various parties Elias to Camou in nowise conformed to the laws of the situs of that part of the property which is in the United States, and it was impossible for the Camous by such instrument to acquire title which would be valid under the American law. The various deeds were drawn up in the Mexican form, and while they might be good to convey title to the part in Mexico, they are of no effect, as we submit, as to the part in the United States. The devolution of title to land is governed by the law of the country where the land is situated, and parties in Mexico might in the best of faith attempt to deed land in Arizona, by means of a deed conforming to the laws of Mexico, and yet wholly fail of their object because such deed did not comply with the law of the situs.

For authorities on the point that the title and disposition of real property is subject exclusively to the laws of the country where it is situated, which can alone prescribe the mode by which a title to it can pass from one person to another, the court is referred to *McCormick vs. Sullivan*, 10 Wheat., 193; *Kerr vs. Moon*, 9 Wheat., 571; *Bryan vs. Insurance Co.*, 6 Otto, 627.

The so-called deed of sale did not comply with the statutes of Arizona. (See *Howell's Code of Arizona*, 1864, p. 275; *Compiled Laws of Arizona*, 1877, p. 380.)

This court under the act creating it will not attempt to pass on the rights between the Eliases and Camou. If it were of opinion that the title is in Camou, every objection of the Government on this point seems to be met by the fact that Eduardo Camou was made a coplaintiff. What the Government has in mind in criticising the fact that the deed under which he claims is a quitclaim deed is not apparent to us. It is generally thought that a quitclaim deed will convey an existing title just as fully as any other instrument known to the law. If Eduardo Camou is willing to

take a quitclaim deed, it does not lie with the United States Government to complain.

It is submitted that this case should be reversed and a decree be entered confirming this grant according to the Bonillas survey.

Respectfully submitted.

ROCHESTER FORD,
Attorney for Claimants.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

SANTIAGO AINSA, ADMINISTRATOR OF the estate of Frank Ely, deceased, and Edward Camou, appellants, v. THE UNITED STATES.	} No. 40.
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

AGUA PRIETA GRANT IN ARIZONA.

BRIEF ON BEHALF OF THE UNITED STATES.

On February 28, 1893, the appellant Ainsa, as administrator, filed his petition against the United States and Hugh H. Whitney for what is known as the Agua Prieta grant, alleging that the last-named defendant held or claimed a portion of the grant by virtue of a patent from the United States. The material averments of the petition are as follows:

That he claims the grant as such administrator by virtue of a "grant title," dated December 28, 1836, made by the Mexican Republic by virtue of article 11 of decree No. 70, passed August 4, 1824, by the sovereign constituent Congress of the United States of

Mexico, stating that the article in question concedes to the States of the Republic of Mexico the rents and revenues which by said law are not reserved to the General Government, one of which revenues is the vacant lands within the respective States, which said lands in consequence belong to such States; for the disposition of which lands under said decree the constituent congress of the State of Sonora and Sinaloa passed a law, No. 30, bearing date May 20, 1825, and other decrees relative thereto by successive legislatures, which decrees are embodied in sections 3, 4, 5, 6, and 7 of chapter 9, of the organic law of the treasury, said law being No. 26, and dated July 2, 1834. (R., 1, 2.)

That regular and lawful proceedings were had under said laws, by which the Mexican Government sold and conveyed to Juan, Rafael, and Ygnacio Elias Gonzales, in consideration of \$142.50 and other valuable considerations set out in the "grant title," the said Agua Prieta grant. (R., 2.)

The proceedings referred to are set out at length in the petition, and, as disclosed by it and the title papers, were briefly as follows:

On July 21, 1831, Juan, Rafael, and Ygnacio Elias Gonzales petitioned the treasurer-general of the State of Sonora, Mexico, for the water and lands of Santa Barbara, Naidenibáachi, Agua Prieta and Cabuyona (R., 360). On August 12, 1831, the treasurer-general ordered an investigation to inquire if the petitioners had the number of cattle they claimed to have, and also if the lands owned by them were not sufficient to

support their cattle, and whether or not they needed the lands asked for in their petition (R., 117, 118). Investigation was made by the proper officer and reports made to the treasurer-general, which satisfied him that the petitioners ought to have the lands prayed for (R., 118-121), and he so ordered (R., 121). Whereupon a commission was issued to the citizen Joaquin Vicente Elias, a resident of San Ygnacio, to survey the said lands (R., 121, 122), which, however, was postponed till August 20, 1835, on account of the alleged inroads of the Indians (R., 122), on which latter date the interested parties were notified by the commissioner (R., 122, 124), and the adjacent owners summoned, and official surveyors, accountants and markers appointed (R., 124, 225), and a survey of the Agua Prieta made on September 28 and 29, 1835 (R., 125, 126), a calculation of which resulted in 6 short sitios (R., 126). On the following days surveys of the other lands asked for were made (R., 126-128). On October 1, 1835, the lands of Agua Prieta, being then stated at $6\frac{1}{2}$ sitios, were appraised by officers appointed by the commissioner for that purpose, one of the sitios being appraised at \$60 because it contained limited water, and the other $5\frac{1}{2}$ at the rate of \$15 each, as they were absolutely dry (R., 128, 129), and appraisement of the other lands petitioned for was also made at the same time, the total, including the Agua Prieta, being appraised at \$432.50.

These lands were then offered for bids at Arispe, the capital of Sonora, for thirty consecutive days from

June 4, 1836, to July 4, 1836 (R., 130-135), but there were no bidders.

The petition then continued (R., 4):

The proceedings being finished, they were, on July 7, 1836, forwarded to the treasury (R., 136), which, by decree of September 9 of said year, forwarded them to the solicitor of the treasury (R., 136), who, on September 12, 1836, submitted his opinion, * * * and stating that there was no obstacle to prevent the treasury from ordering the public auction by the board and issuing the proper title of transfer in favor of the interested parties or of the highest bidder. (R., 136.) The treasury-general, being satisfied with this opinion of the solicitor, by decree of September 15, 1836, made order to proceed to the three public auctions on the same day and on the next two succeeding days of said month (R., 137), and, there being no bidders, the said 18 sitios and 12½ caballerias of land were auctioned off to the citizens Juan, Rafael, and Ygnacio Elias Gonzales, as appears by the record thereof in said expediente. (R., 137-139.) On the same day it was ordered that the said Rafael Elias, for himself and in the name of his copartners, should proceed to pay into the treasury the \$432.50, the value of all said lands, which he thereupon did. The proper certificate, signed by the treasurer-general in proof of the said payment (R., 139), was thereupon joined to the expediente, and the said lands, as measured and surveyed, were, in due form of law, granted, given, adjudicated, and sold and conveyed by a complete

and perfect title in fee to the said citizens, Juan, Rafael, and Ygnacio Elias Gonzales, and their heirs and successors; and the said title was thereupon recorded, in compliance of law, in the archives of the treasury-general at Arispe, in the State of Sonora, on page 41, and the other side of it of the Book of Toma de Razon for the year 1836. (R., 140.)

The petition then recites that the original or first copy or testimonio of said grant is not in plaintiff's possession; that the firm of Camou Brothers, composed of Juan Pedro Camou and Pascual Camou, of Guaymas, Mexico, claiming to be the successors in interest of the original grantees, on February 26, 1875, presented their petition to the surveyor-general of Arizona under the act of Congress of July 22, 1854, praying for the confirmation to them of the lands known as Naidenibacachi, Agua Prieta, and Santa Barbara, and filed therewith the original or testimonio or first copy of said grant of lands, the same being that under which the petitioner claims; and that afterward said testimonio or original title was returned to said Camou Brothers, and is now in their possession.

That when so deposited with said United States surveyor-general, the said title papers were examined, and it was found that the original expediente thereof was found in its proper place in the archives, and its regularity in other respects was discovered (R., 5); that said original testimonio or first copy of said grant was recorded on May 1, 1867, in the office of the recorder of deeds of Pima County, Ariz., and two certified copies of such record are filed. (R., 6.)

That no further action has been taken by the United States relative to said grant. (R., 5.)

With other allegations of ownership and possession, and that no other persons claim said grant except by the license or permission of said petitioner, other than said Whitney and one other person, to the petitioner unknown, and specifying by sectional description the lands claimed, the petition closes with the usual prayer for relief. (R., 6.)

The answer of the United States was filed March 16, 1895 (R., 9), and after denying the ownership and possession of the plaintiff, it states that if the State of Sonora undertook to grant said property it was without warrant or authority of law, and void, for the reason that the said State of Sonora did not have the title to the property, the same being vested in the National Government of Mexico, and that whatever proceedings may have been had under the State laws were null and void, and passed no title against the National Government.

That at the time of the issuing and recording of the grant, Sonora was a department under the National Government and its officials were prohibited by law from disposing of the public domain until the National Government should provide regulations therefor.

That the grant claimed is located within the Republic of Mexico, and therefore not within the jurisdiction of the court.

That the said grant had been in 1882 confirmed to Camou Brothers by the Mexican Government, after

investigation and survey thereof, and as such lies south of the international boundary line; that the *demasias* of said grant was also confirmed at such time to said Camou Brothers, and that a large area still existed between the north boundary of said grant and the *demasias* and the international boundary line, which has since been purchased from the National Government by said Camou Brothers.

That said grant was, prior to the treaty of Mesilla, on November 25, 1853, by lawful authority of the Republic of Mexico, pending a negotiation of said treaty, declared to be null and void.

The answer concluded with a prayer that the court find that said grant lies wholly within the Republic of Mexico, and that the claim be rejected and the petition dismissed. (R., 11.)

On March 16, 1895, the plaintiff filed his amended and supplemental petition, as follows (R., 11-12):

* * * Petitioner avers that prior to the treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by anyone, and that neither the grantees nor their successors in interest had, prior to said treaty, any knowledge or notice that within the said monuments there was an excess of land over the area stated in said title papers, and petitioner avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and entitled to occupy and

retain the same as their own, even after such overplus is shown, without other obligation than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and petitioner further avers that if this honorable court should decide that said sale, as recited in said title papers did not, as petitioner avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained.

Wherefore, petitioner now tenders to the United States of America and offers to deposit with the clerk of this honorable court of the United States of America the sum of \$600 in gold coin of the United States of America as payment for all such overplus or surplus of lands in said grant, according to their quality and the price which governed when they were surveyed and appraised, and the further sum of \$200 in like gold coin for the costs of ascertaining and determining the existence or nonexistence of such surplus, and prays that this court order the clerk of said court to accept said sum as such tender; and, as aforesaid, offers to pay said amount or any amount which may by this honorable court be adjudged to be due for such overplus or surplus, and prays that upon said payment this honorable court decree that peti-

tioner is entitled to and is the owner of all of said tract of land, as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the possession and ownership of the whole of said tract; and petitioner prays that the validity of his said title may be inquired into and decided, and that his title to all of said lands be declared valid, and that the said grant be adjudged to be and always to have been a complete and perfect and unconditional title in fee, and that petitioner be adjudged to be the owner in fee thereof, and for such other and further relief, etc.

The area claimed to be included in the grant, as shown by the exhibits (maps) filed by the petitioner, is 163,797.48 acres.

The court below held the grant to be of no validity, and rejected the claim and dismissed the petition (R., 370). The opinion of the court, delivered by Mr. Justice Murray, is found in the record, pages 373 and 374. A large amount of testimony was taken at the trial in the attempt to establish a major portion of the grant to be within the United States.

The plaintiff tendered in evidence a certified copy of the *expediente* and the *toma de razon* of the grant, covering three tracts of land, called, respectively, *Agua Prieta*, *Naidenibácachi*, and *Santa Barbara*, from the archives under the control of the treasurer-general of Sonora, as Exhibit A (R., 98), and translation thereof as Exhibit C (R., 116); also the *título* to the same as Exhibit E (R., 141), and translation thereof as Exhibit F (R., 153).

Following the Government's translation of the *titulo* (R., 360), which differs materially from that tendered by the claimant, it appears that, on July 21, 1831, Juan, Rafael, and Ignacio Elias Gonzales made a petition to the treasurer-general of the then State of Sonora, stating that in the lands of San Pedro and Cienega de Heredia belonging to them, and situated in the jurisdiction of the presidio of Santa Cruz, they have cattle and sheep, whose numbers they can not feed in the *sitios* belonging to them, for which reason their stock wander to the four points of the compass, more particularly toward the water of the Santa Barbara, Naidenibáachi, Agua Prieta, and Cabuyona, by which they suffer incalculable damage, because as they are public lands everybody who wishes enters freely into them, gathers and runs off stock, and, because of this condition of doing as one pleases without their consent or permission being necessary, the consequences are outrageous robbery and that the cattle are driven farther and farther away; and in order to obviate such damages and that their breeding lands may be sufficient for the number of cattle they have and "which ought soon to be increased, notwithstanding the continued damages the Indian enemies of war cause, we find ourselves in the case of making formal denouncement, as we hereby do, of the lands that may be found to be public land within the points and waters mentioned, which are bounded on the north by the Chiricahua Mountains; on the south by the lands of the Sinaloa; on the east by the Cabuyona Mountains,

and on the west by the lands of the Saus. Therefore, we petition and pray your excellency to be pleased, under the law of May 20, 1825, and the power given you by article 22 thereof, to admit the denouncement we make of said lands and to issue the corresponding order for the survey, appraisement, publication, sale, and other proceedings necessary to be executed thereon until the issue of the title and agree to pay the fees, costs, and whatever is necessary." (R., 361.)

On August 12, 1831, Treasurer-General Mendoza referred the petition to the second alcalde of the city of Arizpe, with directions for a hearing as to whether the petitioners have the number of sheep and cattle they claim, whether their holdings are positively insufficient for the support of this stock, whether they have need of "all or any part of the unappropriated public lands and watering places" petitioned for, and whether the lands petitioned for are "outside of the boundaries of the border presidios." (R., 118.)

Testimony was taken by the alcalde, and a report was thereupon presented to Mendoza (R., 117-121). On October 10, 1831, at Hermosillo, Mendoza having received the report upon the propriety of proceeding upon the petition of the said petitioners, appointed Joaquin Vicente Elias, resident of San Ignacio, without damage to third parties who might have a better right, having first summoned adjacent owners to "proceed to take the legal steps to survey the said public lands, effecting the measurement, appraisement, and posting as provided in the sovereign decree of the con-

stituent Congress of the United States that was No. 30, of May 30, 1825, and its proper resolutions, and also as is provided in the decree No. 175, of November 20, 1830, and other determinations and regulations extant on the subject, and said proceedings having been executed, he should send the originals to this treasury, summoning the interested parties to appear in person or by attorney at the auction of the said lands, which must take place in an auction sale in this city." (R., 121-122.)

Joaquin de Elias, supposedly Joaquin Vicente Elias, accepted the appointment and postponed the survey, appraisement, and advertisement "till the inroads of the Indians, barbarians, become less frequent." (R., 122.)

Nearly four years thereafter, at Arizpe, on August 20, 1835, said Joaquin de Elias, reciting that the atrocities of the barbarous Apaches have abated somewhat, undertook to execute the commission given him by Mendoza, dated October 10, 1831, but before doing so stated it was necessary to notify the interested parties in order that they might be present either in person or by attorney and witness the measuring of said lands. (R., 122, 123.)

Two of the petitioners, Juan and Rafael Elias Gonzales, being present, he notified them and they appointed Fernando Lueke as their attorney. (R., 123.) Notice was given to owners. (R., 123, 124.)

At the place of Agua Prieta, on September 28, 1835, the commissioner appointed and qualified his assistant

measurers and counters (R., 362), and thereupon proceeded to the survey of the Agua Prieta tract (R., 362, 363).

Omitting the preliminary statement, that survey was as follows:

At the place of Agua Prieta, on September 28, 1835, the attorney for Messrs. Elias was asked to point out the place they wanted as the center, and he pointed it out in a lake which is in the middle of a valley which has the name of said place and covers its whole circumference.

(1) "Then the course to the south was observed and along it they went, scrupulously measuring and counting 59 cords, which terminated in a thicket of willows which are in the middle of the valley." These were to serve as a monument until one of masonry should be erected as required by law.

(2) "Having returned to the center, the course to the north was observed, and up the valley there were measured 100 cords, which terminated on a very small hillock (*lomita*), fronting on the east with what they call Saddle Pass." A heap of stones was caused to be placed there and a cross to mark the place for the monument.

(3) "Having returned to the center, the direction of the east was taken, and along it there were measured and counted 168 cords, which terminated on a high hillock (*loma*) which is to the right of the pass where the old road passes from Santa Cruz to San Bernardino," where the surveyor ordered to be placed a heap of stones and a cross for a monument.

(4) "Having returned to the center, the course to the west was taken, and along it there were measured and counted 240 cords, which ended a little beyond where the mountain seen in this direction terminates, on a broad red hill (*cerro*) that has a brow on the south side and fronts on the west the highest part of the San Jose Mountains." A heap of stones and a cross to mark the place for a monument were ordered placed there.

This concluded the survey for the day.

(1) At Agua Prieta, on September 29, 1835, the following day, the perimeter of the land was run (R. 363), conforming the end and side lines to the center lines in direction and distance, as follows:

"I, the commissioned judge for the purpose of continuing the course of these proceedings, proceeded with the appointed assistants to the place for the north monument, and having observed the course to the east there were measured and counted along it 168 cords, which terminated near Saddle Pass on a small hillock (*loma*), which is to the right and near two others that are higher." A pile of stones and a cross were ordered put to mark the place for the monument.

This line established the north boundary east of the north center monument, on a line which should be practically parallel with the line east from the center monument, and also fixed the northeast corner of the survey, which was the subject of most of the controversy at the trial.

The survey was then continued, as follows:

(2) "Having returned to the place for the north monument from which the measurement started, and the course to the west having been observed, there were measured and counted along it 240 cords, which terminated on a small hill (*cerro*), which is in front of the cross monument in said direction, where another and a cross was caused to be placed." This line fixed the north boundary from the north center monument west to the northwest corner.

(3) The west line of the perimeter of the grant, starting at the northwest corner, is thus described: "Thence, observing the course to the south, there were measured and counted 89 cords, which terminated at the cross monument of the west course" (supposedly the west center monument), "and continuing in the direction of said south course there were measured 60 cords, which terminated at the foot of a high hill (*cerro*) facing on the south another hill that has a dark crest and on the east a pass, which on the left has two hills (*cerros*) and is made up of several red peaks," where the usual heap of stones and cross for a monument was ordered placed. This concludes the west boundary and establishes the southwest corner of the survey.

(4) "Having observed the course to the east from this point, there were measured and counted 240 cords, which terminated at the south cross monument, in the thicket of willows that have been mentioned before."

(5) The east-half of the south line and the whole of the east line were simply estimated and not meas-

ured. Starting from the south center the survey states:

From there there were estimated 178 cords, on the course to the east, to the foot (*falda*) of the first pass which is to the right of the point where the cross monument of said course came, both points being on a straight line at the foot (*falda*) of the Perillo Mountains.

This concludes the south boundary, and establishes the southeast corner.

(6) "Thence [measuring from the southeast corner] on a course to the north, there were estimated 59 cords, which terminated at the east cross monument" (evidently meaning the east center monument).

Nothing appears to show any connection being made between the east center and the northeast corner by actual measurements or even by estimation.

The survey of the Agua Prieta tract is concluded in the following language:

The survey being in this manner concluded, and containing in its area, the calculation having been made with absolute correctness, $6\frac{1}{2}$ short sitios. The party, who stated that he was satisfied with what had been done, was cautioned to inform his parties in due time to have monuments of stone and mortar constructed, as is provided (R., 363, 364).

The remainder of the survey pertains to the Santa Barbara and Naidenibácachi tracts, containing an area of $11\frac{1}{2}$ sitios and $12\frac{1}{2}$ caballerías, which added to the $6\frac{1}{2}$ sitios included in the Agua Prieta survey, made a

total of 18 sitios $12\frac{1}{2}$ caballerias. The Santa Barbara and Naidenibáachi tracts are not here involved, so that the survey and sale of the Agua Prieta tract is the only part of the proceeding that will be considered in this brief.

On October 1, 1835, the acting judge commissioner of the survey, Joaquín Vicente Elías, designated as appraisers two of the persons who had accompanied him on the survey just concluded, and thereupon said appraisers (R., 129-365), having accepted said appointment and made oath in due form of law, well and truly to discharge the duties of said office, reported as follows:

They said that the $6\frac{1}{2}$ sitios comprised in the survey of the Agua Prieta they held to be worth for 1 sitio \$60, on account of its containing a limited water course (or watering place), and the others to be worth \$15 each, as they consisted of absolutely dry land, making the total amount of the appraisement \$142 and 4 reals (R., 129).

Thereupon the lands were published for thirty consecutive days at the value fixed, in solicitation of bidders, from the 4th of June till the 3d of July in the year 1836 (R., 129-136).

The terms of the advertisement for bidders published throughout said thirty days (the italics being the writer's) were as follows (R., 130):

At the city of Arispe, the capital of the department of Sonora, on the 4th day of the

month of June, 1836, I, the aforesaid commissioner, in order to put into effect what has been ordered in the foregoing mandate, caused an offer for bids to be made by the beating of the drum by the police officer, Loreto Salcedo, which offer was actually made in these terms: There are for sale on account of the public treasury *eighteen sitios and twelve and one-half caballerias* for raising cattle, which compose the place Agua Prieta, Naidenibacachi, and Santa Barbara, surveyed in favor of the citizens Juan, Rafael, and Ignacio Elias Gonzales, which are appraised in the sum of four hundred and thirty-two dollars and four reals. Any one who wishes to bid more than this appraisement may come before me as commissioner, where his bid will be received.

At the close of the advertisement of thirty days the promotor fiscal, to whom the matter was submitted by order of the treasurer-general, reported that there was no obstacle to prevent the treasury from ordering the public auction by the board and to issue the proper title of transfer in favor of the interested parties or of the highest bidder (R., 136).

On September 15, 1836 (R., 137), the treasurer general ordered three public auctions in due form to effectuate the final sale of the land of which said proceeding treated, and for that purpose orders that the members of the board of sale be summoned to appear at his office. The three *almonedas* or offers of sale were thereupon had on September 15, 16, and 17, 1836 (R., 137-139). In view of the question of quantity in

this case the advertisement of the property for sale is quoted, as follows (R., 137):

There are going to be sold on account of the public treasury of the department *eighteen sitios and twelve and one-half caballerias* of land for the raising of cattle and horses, comprised in the places called Agua Prieta, Naidenibacachi, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, in the district of this capital, surveyed at the request of the citizens Juan, Rafael, and Ignacio Elias Gonzales, of this town, and appraised in the sum of four hundred and thirty-two dollars and four reals, as follows: The *six and one-half sitios*, which compose the survey of Agua Prieta, one in the sum of sixty dollars, on account of having a small spring, and the other five and one-half at the rate of fifteen dollars each, on account of their being absolutely dry; and the other eleven and one-half sitios, together with the twelve and one-half caballerias, of which the other two places consist, one in the sum of eighty dollars, one in the sum of sixty dollars, and the others at fifteen dollars each, all of which sums together go to make up the total amount of four hundred and thirty-two dollars and four reals. Whosoever wishes to bid on the said land, let him come forward and make his bid in due form before this commission, where his bid will be received with the understanding that on the day after to-morrow the sale will stand concluded in the highest bidder.

After advertisement, on September 17, no bidder

appearing, the board of sale, consisting of the treasurer-general, Milla, the judge of the first instance, Julian Padilla, and the promotor fiscal (attorney-general), Pedro Rodriguez Guzman, proceeded to hold the third and last auction "for the sale of the *18 sitios 12½ caballerias* of land comprised in the places known by the name of Agua Prieta, Naidenibacachi, and Santa Barbara." The record of final sale (R., 138) is as follows:

At this time there appeared the citizen Rafael Elias, bidding for himself and in the name of his partners, the citizens Juan and Ignacio Elias Gonzales, the above-named sum of \$432 and 4 reals, at which the said lands were appraised; and the midday bell of this day having now struck without a bidder appearing who offered more, the auctioneer at last said in a loud and clear voice "for the first time, for the second time, for the third time, going, going, sold to the said Rafael, Juan, and Ignacio Elias Gonzales."

On these terms this act was concluded, *the said 18 sitios 12½ caballerias* of land which compose the said places of Agua Prieta, Naidenibacachi, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, having been publicly and solemnly sold to these interested parties for the said sum of \$432 and 4 reals, at which said lands had been appraised.

On September 17, 1836 (R., 139), José Justo Milla, the said treasurer-general of the department of Sonora, recites that "the sale of the *18 sitios and 12½ caballerias*

of land for raising cattle and horses, which comprise the places called Agua Prieta, Naidenibacachi, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras," have been concluded in favor of the parties named, and directs that the purchasers should be notified that they must proceed to pay into the treasury of the department of Sonora, under his control, the said sum of \$432 and 4 reals, for which said lands were publicly sold, and upon certificate of payment made in the usual form being attached to the proceeding, title of sale shall be issued to the interested parties for their protection, according to law. The expediente bears indorsement (R., 139) that the title of the sale of the land to which the expediente refers was issued on December 28, 1836.

A copy of this title so issued was tendered by plaintiffs (R., 27, 153): the Government's translation of the same appears in the record, pages 360-370. From this document it appears that the title was issued by José Maria Mendoza, treasurer-general of the department of Sonora on the date above given, to wit, December 28, 1836, pursuant to the proceedings above set forth, and that the purchase money for said "18 *sitios* 12½ *caballerias* of land for breeding cattle and horses, contained in the places called Agua Prieta, Naidenibacachi, and Santa Barbara" (R., 162) was paid on December 26, 1836. The caption of said titulo or patent is as follows (R., 360):

Title to the grant of 18 *sitios* 12½ *caballerias* of land for breeding cattle and horses, which

are comprised in the places called Naidenibacachi, Agua Prieta, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, issued by the treasury-general of the department of Sonora, in favor of citizens Juan Rafael and Ignacio Elias, residents of this place.

The granting clause used in the titulo or patent (R., 368) is as follows:

Therefore, in the exercise of the powers the laws give me, by these presents and in the name of the Republic of Mexico, I grant, in due form of law, *18 sitios 12½ caballerias* of land for breeding cattle and horses contained in the places called Agua Prieta, Naidenibacachi, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, in this district of this capital, to citizens Juan, Rafael, and Ignacio Elias Gonzales, to their heirs and successors,
 * * * and I order and command the judges, justices, and authorities * * * not to permit the said parties in interest nor their heirs to be in any manner annoyed, disturbed, or molested in the free use, exercise, right of property, dominion, and possession of the said *18 sitios 12½ caballerias of land* contained in the places called Agua Prieta, Naidenibacachi, and Santa Barbara, etc.

Plaintiffs introduced in evidence a certified copy of the entry in the book of *toma de razon* of the issuance of this titulo, said *toma de razon* being as follows (R., 140):

On December 28, 1836, there was issued the title of sale of *18 sitios 12½ caballerias* of land

for raising cattle and horses, which comprise the places of Naidenibacachi, Agua Prieta, and Santa Barbara, in the jurisdiction of the presidio of Fronteras, in favor of the citizens Juan, Rafael, and Ignacio Elias Gonzales, of this city. (Signed) Mendoza. [Rubric.]

On the trial of the cause, plaintiff Santiago Ainsa, administrator of the estate of Frank Ely, deceased, introduced in evidence a number of deeds made by certain descendants of the original grantee to plaintiff's intestate and the latter's predecessors in title. These deeds range in date from December 24, 1886, to January 24, 1893 (R., 164-179), and in connection with the testimony of Lola Elias (R., 180-182), introduced by plaintiff, establish the fact that if the Eliases who sold to Frank Ely, deceased, in 1886 and later, had not previously disposed of such interests as they had in the grant, the said deeds invested the plaintiff with sufficient title to prosecute the suit and to invoke the judgment of the court upon his claim. It was contended by the Government, however, under the issue made by its answer (R., 9), that Santiago Ainsa had no ownership in any part of the land described in the petition, either as administrator or trustee, for the reason that the Eliases, who sold to Ely, had previously sold the same property to the Camous, and in support of this issue the defendant tendered in evidence, on the trial (R., 271), a deed made by the Eliases, dated July 25, 1862, conveying to the Messrs. Camou, of Hermosillo, Mexico, all of the property forming the subject-matter of this suit, and also a certain proceed-

ing dated March 17, 1869 (R., 276), and a further proceeding initiated November 15, 1880 (R., 349), showing that the equity of redemption existing under the conditional sale from the Eliases to the Camous, just mentioned (R., 271), subsequently became extinguished, and the full title to this property became thereby vested in the Camous (R., 356). Plaintiff's counsel apparently recognized the strength of this testimony on behalf of the Government, and presumably in order to have before the court some one undoubtedly connected with the title, on May 31, 1899, moved the court for an order making Eduardo Camou party plaintiff to the cause, and presenting a deed from Juan Pedro Camou to said Eduardo Camou, covering the grantor's interest in the Agua Prieta grant north of the international boundary line. This deed is a quitclaim deed, *dated subsequently to the beginning of the trial of the cause*, and the propriety of the action of Mr. Camou in making the deed in the form of a quitclaim will be more fully appreciated hereafter when it is seen that his predecessors in title withdrew the Agua Prieta grant from the consideration of the surveyor-general of Arizona on the ground that no part thereof lay in American territory. It is quite evident that Juan Pedro Camou was unwilling to stand sponsor for the proposition that any part of this grant lay in the United States; and at the same time he was willing to make a quitclaim deed so as to allow his son Eduardo Camou to take his chances of getting something out of a claim against the United States that the father did not be-

lieve to be well founded. The title of Ainsa being disproved by the record, the case, in the view of the Government, stands upon the interest of Eduardo Camou deraigning title under Juan Pedro Camou in a proceeding initiated for the confirmation of this grant on May 31, 1899, the date when the court allowed him to come in as a party to the cause. Even as to Eduardo Camou there is no proper connection with the title, there being nothing to show how Juan Pedro Camou got title from Pascual Camou, who was the owner of the grant in 1881 (R., 261).

On the trial of the cause plaintiffs introduced Eduardo Camou, who testified that he was the son of Juan Pedro Camou, and that he had been requested by plaintiffs' attorney to bring up to court the original title papers of the Agua Prieta grant, which were in the possession of his father, but that the latter was afraid to trust them out of his possession, as they were very old (R., 27). Considering the fact that Mr. Juan Pedro Camou, if plaintiffs' contention as to boundaries is correct, was at the date of the trial of this suit the owner under the Agua Prieta title of over 68,000 acres of land in Arizona, the fact that he would not allow the original title to leave his hands for the purpose of sustaining a claim to this princely domain is almost as instructive on the subject of his belief in the location of this claim as are the acts of his predecessors and associates in title, to be hereinafter discussed, in declaring in 1880 (R., 359) that this grant lay entirely within the Republic of Mexico, and in participating in 1880-1886 (R., 190-241)

in at least two surveys under the Mexican Government, fixing this grant entirely south of the international boundary line.

The leading witness examined in chief in behalf of claimants in the trial below was Ignacio Bonillas, who testified (R., 13) that he was a mining engineer and surveyor; that the Spanish language was his native tongue; that he had been trained as a mining engineer in the Massachusetts Institute of Technology, in Boston; that he had had an experience of fifteen or sixteen years in surveying lands, both in Arizona and in the State of Sonora, Mexico, and that he had held various positions of trust in the State of Sonora. He testified that he had made a survey of the Agua Prieta grant on behalf of claimants and had made a map of such survey, which was tendered in evidence as plaintiffs' Exhibit I, and is found in the record opposite page 24.

Mr. Bonillas testified (R., 14) as to the details of this survey made by him in October, 1895. He stated that he engaged as his guide on this trip one Francisco Valencia, of the town of Oputo, Sonora, alleging that said Valencia had been for many years familiar with the country thereabouts, and that he also consulted with two other persons concerning the points mentioned in the title papers and as to where the monuments were originally established. Neither Francisco Valencia nor the two other parties were produced by the plaintiffs on the trial of the cause in support of the names and topography shown by Mr. Bonillas in his survey; and the only testimony to the effect that such

names apply to certain natural objects is Mr. Bonillas's hearsay testimony as to what these parties told him. Mr. Bonillas testified that the initial or starting point of the survey of this grant is a pond called Agua Prieta, meaning black water, from which the grant has derived its name, said point being situated in the Agua Prieta Valley, known in Arizona as Sulphur Spring Valley, about 3 or $3\frac{1}{2}$ miles south of the international boundary line. It may be here stated that there was no controversy on the trial about the location of this natural object constituting the center of the grant. Bonillas testified further that from the initial point he went down the valley in a southerly direction to the place known as Los Sauces, so called from the existence at that point of a growth of willows, which form quite a noticeable feature in the valley, as for miles around no others are to be found, either now or, according to the statements of old inhabitants, at any time within their recollection. Witness found no pile of stones exactly at the clump of willows (R., 15), but a short distance to the east, at the border of the valley, he found an old pile of stones which he adopted as the south cruz or south center monument of the grant.

Witness testified that, starting from the initial point of the Agua Prieta, he went up the valley in a northerly direction, searching carefully for the north center monument, which, it will be recalled from the expediente, was *ordered* placed 100 cords north of the Agua Prieta and "*on a very small hillock (lomita) fronting on the east with what they call Saddle pass.*" Witness stated

that he spent three days with three assistants looking for this monument, but was unable to find any monument to answer the calls of the title papers. His opinion was that the original monument had been swept away by the floods, as, judging from the description of the title papers, the country is very flat in the locality where the monument must have been placed. In view of the fact that the title papers put this monument on the top of the small hillock, it is difficult to account for witness's theory as to its being placed on a flat. Witness stated that in searching for this monument the Puerto de la Silla, or Saddle pass, was pointed out to him from the valley, and that his search extended both north and south of a line running westward from said pass at right angles from the course of the valley. He did not state who pointed out this pass to him, and no testimony was produced on the trial from anyone living in the vicinity of the locality that this pass was so called, although two witnesses living in the immediate vicinity were sworn by plaintiffs.

Bonillas further testified that the east cruz or east center monument is "so precise and clear" in the original field notes that he encountered no difficulty in identifying it. The position of this monument, as stated in the expediente, is, it will be recalled (R. 363), a point at a distance of 168 cords eastward from the center, terminating "on a high hillock which is to the right of the pass where the old road passes from Santa Cruz to San Bernardino," presumably the old

road in 1835, the date of the title papers. Bonillas testified that he inquired of people from Fronteras and Santa Cruz, who traveled forty or fifty years ago over the road leading from the latter town, then a presidio, to San Bernardino, and from a man who was a soldier among the escort of the Mexican Boundary Commission while making the original survey of the international boundary line (in 1855), and that he learned from them that the road from Santa Cruz to San Bernardino crossed the Ceniza or Perillo range of mountains through the Gallardo pass, running north of a butte called Gallardo, and that the same road is traveled to-day, as it is the most direct road between the two places mentioned and one which offers less difficulties to travelers, both on vehicles and on horseback. He stated that, accompanied by his guide, he followed this old road from the center of the valley eastward to Gallardo pass, where the international boundary monument No. 82 is located, and from there he went to the top of a high hill which rises to the right or in a southerly direction, where he found a large old monument of loose stones, at the foot of which a cross formed of stones can be clearly defined. It may here be remarked that the contention of the Government is that the above-mentioned "old" road was opened in 1855 and that the Bonillas east center is in the immediate vicinity in which the *northeast* corner of 1835 was fixed, the east center of that survey being, as contended by the Government, 2 or 3 miles farther south, at what is described in the testimony as the Misa pass.

Mr. Bonillas also refers to the position of the west cruz or west center monument as being described with "accuracy and clearness" in the grant papers, taken in connection with his examination on the ground. After describing the general geological formation of the Naidenibacachi Mountains lying to the southwest of the Agua Prieta, he describes (R., 16) a red hill sloping toward the north having on its summit a ledge of rocks resembling an eyebrow, which is the literal meaning of the word *ceja* used in the title papers in describing this hill, at which point he found a large pile of stones very much like the alleged east center monument at Gallardo pass, even in the circumstance of having at its foot a well-defined cross of loose stones.

Going back to the east boundary, Bonillas states that he found the northeast corner at the place described in the title papers. The expediente, it will be recalled, places the northeast corner (R., 363) at a point 168 cords distant from the north center monument, and on the course to the east therefrom, and "near Saddle Pass on a small hillock (*loma*), which is to the right and near two others that are higher." Bonillas testified that Puerto de la Silla, or Saddle Pass, was pointed out and described to him with all precision possible. He does not state by whom this was done, and no witness was produced on the trial of the cause to testify from residence in the locality that this pass was so called; but, on the contrary, neither of the witnesses living in the locality produced by plaintiffs in rebuttal, John H. Slaughter (R., 78) and

Eduardo Camou (R., 83), were asked about, or testified to, any such pass. Bonillas testifies that this pass is the first one next north of Gallardo, and is so called from the perfect outlines of a saddle formed by the profile of the northern extremity of the Perillos or Swisshelm Mountains, the horn of the saddle being formed by College Peak, also known in the locality as Silver Peak. The location of the northeast corner was one of the issues of fact on the trial of the cause, the contention of the Government being, as above stated, that this corner was in the immediate vicinity of Gallardo Peak, which rises out of the plain, with intervals north and south growing into mountain ranges in each of said directions, and which peak, if fanciful resemblances are to be indulged in, may very well also constitute the horn of a saddle, completed by the ranges either north or south.

Coming to the northwest corner, which, it will be recalled, the expediente places (R., 363) at a distance of 240 cords west from the north center monument and on a small hill (*cerro*), which is in front of the west center monument, Mr. Bonillas testifies that he located this monument (R., 16) by standing at the northeast corner, as located by him at College Peak, and looking toward the west in a direction at right angles to the course of the valley when two or three small hills can be seen near the foot of the Mule Mountains; going across the valley, which is 25 miles wide at this point, and searching the tops of the small hills, he found the northwest corner monument and

pile of stones upon one of them, and that these little hills, which are of limestone, are about a mile from the foot of the Mule Mountains in Arizona, and that there are no others to the north, or for a considerable distance to the south. Upon the location of this northwest corner there was an issue between the claimants and the Government, the contention of the Government being that this hill was one of a group lying west from the north center monument, as located by the Government, and being south of the international boundary line.

Mr. Bonillas then goes on to describe his location of the southwest corner of the grant, and also the southeast corner, which is described in the expediente as being (R., 363) at an estimated distance of 168 cords on the course to the east from the thicket of willows constituting the south center monument to the foot (falda) of the first pass which is to the right (or south) of the point where the east center monument was located, both the east center monument and the southeast corner being on a straight line at the foot (falda) of the Perillos Mountains. Bonillas located this southeast corner at what is known as the Ceniza Pass, which is situated in a northeasterly direction from the south center monument and in a southeasterly direction from the center monument. As to the location of this call there was no issue on the trial between the Government and the claimants, and this undisputed point in the survey forms the basis upon which it is believed it may be clearly demonstrated that the place adopted

by claimants as the location of their east center was really the correct location of the northeast corner of the grant, and that the east center of the grant was at a point about midway between the Gallardo Pass, the proper northeast corner, and the Ceniza Pass, the agreed southeast corner.

Mr. Bonillas's testimony, which up to this point had been the reading of his field report, thereupon reiterates (R., 17-19) that he could not find the north center monument at all; that the Ceniza Pass (R., 18), at which the southeast corner was placed, has a trail or bridle path going across it; that the old overland road passes just north of the east center monument as designated by him and through the Gallardo Pass, and that the map produced by him, introduced in evidence as plaintiff's Exhibit 1 (R., 24), correctly answers the description of the expediente in every particular to the notion of witness.

On cross-examination witness stated that he lived about 150 miles from the land in controversy and that his knowledge of it was derived from an investigation of it and other surveys made in that vicinity (R., 19); that the international boundary line is properly protracted on his map by triangulation, monument 82 in the Gallardo Peak being monument 19 on the old Emory survey of 1855. Witness testified that the course of the international boundary line was about east and west, and that his center monument at the Agua Prieta is a little over 3 miles, or about 18,000 feet south of the international boundary (R., 20), and

thus in excess of the 1 league or 100 cords stated in the expediente to be the distance from the center monument to the north center monument, 100 cords being about 2.6 miles (R., 21), and that the north center of the grant, if fixed by the distance named in the expediente, would fall south of the international boundary, whether measured in a direct line north and south or measured along the valley of the Agua Prieta (R., 21). Witness admitted (R., 21) that he did not attempt in this survey to make it conform to the measurement given in the expediente, and the reason he gave for this (R., 21) is that if he went just a league north from the Agua Prieta he would just about come in front of where the east center monument is located according to his survey. His inability to locate his north center according to courses and distances, so as to conform to his northeast corner, when it would entirely conform to the Government's northeast corner, if so located, is a very strong circumstance tending to disprove the accuracy of his survey. He further testified (R., 21) that the distance from his center monument to his north boundary line was about $9\frac{1}{2}$ miles, as against 2.6 miles mentioned in the expediente; that the distance from his center to his south center monument is about 6 miles as against $1\frac{1}{2}$ miles named in the expediente; that the distance from his center monument to his west center is about $9\frac{1}{2}$ miles as against $2\frac{1}{2}$ miles named in the expediente; that the distance from his center to his east center monument is about $7\frac{1}{2}$ miles

as against $4\frac{1}{2}$ miles named in the expediente; that his survey was made (R., 22) so as to take in the natural points given in the expediente "without regard to the distances;" and that the total area included in his survey is 163,797.48 acres against $6\frac{1}{2}$ sitios or 28,199.66 acres named in the expediente, or a discrepancy between his survey and the quantity named in the original Mexican survey of 135,597.86 acres. Mr. Bonillas also testified that the center monument, as taken by him, was the pond of Agua Prieta itself, that natural object being about 100 feet wide by 150 feet long, and that his east center monument, which it will be recalled is in the immediate vicinity of what the Government contends constitutes the location of the original northeast corner, is distant 1,604.9 feet a little west of south from the international boundary monument No. 82, thus showing that if the Government's contention as to the location of the northeast corner of the grant at the Gallardo Pass is correct, such northeast corner is within Mexican territory.

On redirect examination Mr. Bonillas attempted to justify his excessive measurements in this case (R., 23) by testimony to the effect that in surveying similar grants in Sonora and Arizona, "of which he had surveyed a hundred if he had surveyed one," he had never found the courses and distances between natural monuments stated in the expediente to correspond with the actual distances as developed by him on his survey, but that the distances were all the way from double the distance to twenty times the distance, and that the

actual area was proportionately in excess of the area stated in the old title papers; that the notes of the old Spanish surveys had never been found by him to be scientifically and mathematically correct; that while the area in this case was said to be $6\frac{1}{2}$ sitios, and it turns out to be $37\frac{1}{2}$ sitios, he had found a great many discrepancies in other surveys, and in the Alamo de Sevilla, surveyed by him, and whose demasias had been confirmed by the Mexican Government to the claimants, he had included 28 sitios in a grant that was for 4 sitios. Mr. Bonillas testified (R., 24) that of the 163,797.48 acres which he included within his survey of the Agua Prieta tract, 95,267.43 acres are within the State of Sonora and the remaining 68,530.05 acres in the Territory of Arizona.

Walter E. Murphy, chief clerk in the surveyor-general's office of Arizona, was sworn by plaintiffs (R., 24) and identified an extract from the map of the topography of the survey of the international boundary line as made by Emory and Ylarregui in 1855, and which appears in the record opposite page 184. The purpose of the introduction of this map was evidently to show the location of the road from Santa Cruz running to San Bernardino north of Gallardo Pass in 1855. The history of that road, which was built by Lieutenant-Colonel Cooke on his famous march in 1846, will be pointed out hereafter.

Plaintiffs also introduced in evidence (R., 28, 186) a letter from Binger Hermann, Commissioner of the General Land Office, to the surveyor-general of Ari-

zona, showing that monument No. 82, on the present survey of the international boundary, is identical with No. 19 of the old Emory survey, and that the same is located to the northwest from a conspicuous landmark known as the Cerro Gallardo.

Plaintiffs also presented in evidence, under a stipulation giving them the same effect as though Oury were present and testified to their correctness, the field notes of the survey made of this Agua Prieta tract for claimants by F. W. Oury on October 1, 1892 (R., 186). These field notes are instructive in that they show a survey made on behalf of claimants differing radically from that relied on at the trial of the cause and made by Mr. Bonillas, also on behalf of claimants. Mr. Oury's survey locates the center of the grant at the Agua Prieta, which, as just observed, is a point well known and it is to be presumed is on Oury's map identical with the point selected by Bonillas as his center. Mr. Oury fixes the south center monument at a bunch of willow trees which are found in the middle of the valley, and which he describes as being the only trees of that description south of Agua Prieta for a considerable distance. The location of this south center on the Bonillas and Oury maps indicates that the two surveyors fixed this monument approximately at the same place. Continuing the comparison it would seem that if the statement made by Mr. Bonillas in his testimony (R., 17) that the identification of the monuments of the Agua Prieta grant are "perfectly established by his survey" is true, and if as stated by Mr.

Oury in his field notes (R., 189) he also, by his examination and survey, "established all the monuments of the Agua Prieta private land claim," the result would inevitably follow that these two surveys would be duplicates one of the other. It requires only a glance at the maps of the two surveys, however, to see the discrepancies between them, and to demonstrate that one or the other of these two eminent locators, both employed on behalf of the claimants, must have erred. Thus, starting from the south center monument, which, in the two surveys, as above stated, is apparently identical, Mr. Oury (R., 6) runs to the southwest corner of the grant on a course N. $64^{\circ} 17'$ W., while Mr. Bonillas in running the same line takes the course N. $89^{\circ} 52' 10''$ W. (R., 24, 25). Further, Mr. Oury reaches this southwest corner after going a distance of 85,839 feet from the south center, whereas Mr. Bonillas reaches the southwest corner after going only 39,053.3 feet. And yet Mr. Oury considers his location of the southwest corner as entirely satisfactory (R., 187), there being only one range of mountains, he says, in which occurs the peculiar red formation which fixes the southwest corner of the grant; and Mr. Bonillas, on the other hand, says that his monument (R., 17) "answers in every respect the recitals of the *testimonio*." When locators disagree in running the same line to the extent of 24 degrees in direction and 4,600 feet, or over 8 miles in length, who shall decide?

Following the survey, Mr. Oury places his west center monument on a course N. $6^{\circ} 55'$ E. from his

southwest corner, and Mr. Bonillas fixes that monument on a course $N. 36^{\circ} 13' 8'' W.$ from the southwest corner. Mr. Oury finds the distance from the southwest corner to the west center monument to be 11,958 feet, or about 2 miles; Mr. Bonillas finds the same distance to be 30,066 feet, or about 5 miles. Mr. Oury locates his west center monument (according to the scale of his map, which it will be observed is 2 miles to the inch and not 1 mile to the inch, as stated thereon), at a distance of about four-tenths of a mile from the international boundary. Mr. Bonillas locates his west center monument, according to the scale of his map (which it will be observed is 12,000 feet to the inch and not 6,000 feet to the inch, as thereon stated), at a distance of 5 miles from the international boundary. And yet Mr. Oury on the one hand says he found a monument of loose rock (R., 188) that answered "perfectly the description of the location of the west center of the claim and whose location on a red hill renders it comparatively easy of identification, as there are no other red hills in the vicinity." And Mr. Bonillas, on the other hand, locating the same monument found (R., 15) the position of the same to be described "with accuracy and clearness," and also found on the crest of a hill a *ceja* or eyebrow, in all respects according with the expediente, and also a large old monument, which he identifies as the west center monument even to the extent of its having a well-defined cross of stones at the foot of it. It is a commentary upon the ease with which piles of stones may be found with which to fit

expedientes that Mr. Oury was able to find what was undoubtedly the old monument at a point a half mile from the international boundary and Mr. Bonillas was able to find a monument equally the undoubted west center boundary of the grant at a point 5 miles from the international boundary.

Continuing from the west center monument, which should have been the same in each survey, if both were correct, Mr. Oury goes on a course N. $36^{\circ} 49'$ E. to find his northwest corner. Mr. Bonillas goes on a course N. $13^{\circ} 43' 13''$ W. to find the same northwest corner. Mr. Oury runs only 16,581 feet from the west center monument and finds the northwest corner. Mr. Bonillas goes over twice that distance, or 39,139 feet, to find that corner. And yet Mr. Oury (R., 88) found the northwest corner with entire satisfaction to himself, and Mr. Bonillas (R., 16) likewise found that corner to his satisfaction.

Coming to the north boundary of the grant, it needs no argument to show the wide discrepancy between the surveys made by these two surveyors acting on behalf of claimants. Mr. Oury (R., 187), searching up the valley, found as the north center of the claim, as called for in the expediente, a comparatively small monument of loose stones on the top of a very small hill, and his survey fixes this point as the north center, being at a distance of about 5 miles from the center monument at Agua Prieta. Mr. Bonillas, who seems to have searched farther up the valley, frankly admitted his inability to find any monument constituting the

north center (R., 17), and entirely ignored that call in making his survey and in platting the same. The result of this is that the point where Mr. Bonillas's north boundary intersects the valley is about $9\frac{1}{2}$ miles against about 5 miles on Oury's survey, and 2.6 miles named in the expediente. The Oury north boundary consists of two broken lines, one running from the northwest corner to the north center corner upon a course S. $85^{\circ} 17'$ E., with a length of 52,972 feet, and the second on a course from the north center monument to the northeast corner upon a course N. $46^{\circ} 8'$ E., with a length of 60,100 feet; whereas the Bonillas map, ignoring the north center monument entirely, goes on a direct course from the northwest corner to the northeast corner of N. $69^{\circ} 14' 10''$ E., with a length of 102,610 feet. The northeast corner and the east center monument of the grant on the Bonillas and Oury maps were evidently placed in the same general vicinity. It is evident, however, that they were not placed at exactly the same point; otherwise it is difficult to account for the discrepancy between the course from the northeast corner to the east center corner in the Oury map, which is S. $4^{\circ} 9'$ E., and the course on the Bonillas map between the same points, which is S. $3^{\circ} 55'$ E., or likewise to account for the difference in distance, the distance on the Oury map being 51,120 feet and that on the Bonillas map being 50,338 feet, or a difference of one-seventh of a mile. As noticeable is the difference in the location of the southeast corner of the grant. While this is in all

probability in the immediate vicinity of the Puerto de la Ceniza, as heretofore stated, it is difficult to understand the difference between its location as laid down by Mr. Bonillas and that laid down by Mr. Oury, except on the ground that the pile of stones which Mr. Bonillas so confidently asserts to be the proper corner is not the correct corner; or, on the other hand, that the pile of stones which Mr. Oury identifies as the southeast corner is not the southeast corner; and that perhaps, after all, the proper southeast corner is not at either of the piles of stones identified with such certainty by the two eminent surveyors, miles apart from each other, but is at some other point in the same general vicinity. Thus the southeast corner on the Oury survey is S. $13^{\circ} 54'$ W. from his east center monument, while on the Bonillas map it is S. $5^{\circ} 26' 45''$ E. from the latter's east center monument. On the Oury map the southeast corner is distant 22,165 feet from the east center, whereas on the Bonillas map it is distant 30,765.8 feet, a difference of over a mile. Likewise the course on the Oury map from the southeast corner to the south center monument, which, as has been seen above, is approximately at the same place, is S. $46^{\circ} 10'$ W., whereas on the Bonillas map it is S. $63^{\circ} 42' 15''$ W.; and the distance from the southeast corner to the south center monument on the Oury is 39,116 feet, against a distance of 40,411 feet on the Bonillas map. These figures demonstrate absolutely that the southeast corner of these two surveys is not at the same place. Yet, Mr. Oury in his field notes (R.,

188) says that in the old monument of loose stones which he found at the first pass or divide after leaving Gallardo he fixed a point "accurately answering the location called for in the expediente" and accepted it as the southeast corner of the claim; and Mr. Bonillas, with equal certainty, states that he readily found the southeast corner in the Ceniza Pass at the point named by him (R., 17). It may here be remarked that Mr. Oury does not in his field notes pretend to have located his southeast corner at the Ceniza Pass, as was done by Mr. Bonillas, but says that he located it at the first pass going south from Gallardo Peak, the point at which he had placed the east center of the claim (R., 188). As contended for by the Government, and contested by claimants on the trial, there is a pass intermediate between Gallardo and this Ceniza Pass called the Puerto de la Misa. The center of this pass, as shown by the testimony of Mr. Tipton on the trial (R., 67), is about N. 87° E. from the center monument at the Agua Prieta, and the point X on plaintiffs' Exhibit 1, which is the west entrance of that pass, is a little south of east of the center monument, as will be seen by an inspection of plaintiffs' Exhibit 1. It is worthy of note that the southeast corner fixed by Mr. Oury is also but slightly south of east from the center monument, and his statement that it is located at the first pass southward from Gallardo, taken in connection with the course upon which it lies from the center monument, indicates that he located his southeast corner not at the Puerto de la Ceniza, but at the Puerto de la Misa.

Had he located it at the former point, his course would have been that shown by Mr. Bonillas's survey, since his monument would have been at practically the same point. While the Government does not concur in the view adopted by Mr. Oury, that the southeast corner was located at Puerto de la Misa, but contends on the other hand that the *east center* monument was there located, this action of Mr. Oury in placing the southeast corner at the first pass south of Gallardo, and in placing that pass almost due east of the center monument, the exact location of the Misa Pass, as shown by the Government's testimony, is strongly corroborative of the testimony for the Government to the effect that there is a pass at this point going through the Perrillo or Ceniza mountains from west to east. The importance of the existence of this pass in determining the boundaries of this grant will be discussed hereafter.

A final comment to be made upon the survey of Oury as compared with that of Bonillas is that, while Mr. Oury finds only 43,499 acres of this grant within the United States (R., 190), Mr. Bonillas, equally certain, finds 68,530.05 acres within the United States. This slight discrepancy of 25,000 acres between two surveys of the same tract, each made by a surveyor who says his survey is correct, is impressive in showing the absolute unreliability which must surround the attempt to locate a grant guided mainly by loose piles of stones. It also demonstrates with clearness the ease with which excessive areas may be included in these

Arizona surveys when once the surveyor has determined to discard the area, distances, and other guides afforded by the expediente as so much meaningless surplusage.

On behalf of the United States the testimony of Mr. Henry O. Flipper was presented. Mr. Flipper testified (R., 29) as to his having been a civil engineer since 1877, having been familiar with surveying in the Republic of Mexico from 1882 to 1893, as to his familiarity with the Spanish language and with the *expedientes*, Spanish documents, and records of the Republic of Mexico, and as to his having surveyed public and private properties in the Republic of Mexico in connection with the *titulos* and *expedientes* on which they were based. He further testified to his having been on the Agua Prieta grant with Special Agent W. M. Tipton and Assistant United States Attorney William H. Pope during the month of April preceding the trial, and to his also having been there in 1886, when he had crossed the grant (R., 30). He described the Agua Prieta lake, which is the center monument of this grant (R., 31), as being about 250 by 150 feet in width, with a pile of stones about 66 feet from the lake. He testified that from this monument of stones at Agua Prieta to monument No. 86 on the international boundary line is 4.04 miles upon a course N. 29° 35' W. true, and that the distance from the Agua Prieta monument due north to the international boundary line is 3.50 miles (R., 31); and that a line run due north 100 cords from the Agua Prieta—that being the

distance mentioned in the expediente—would end nine-tenths of a mile south of the international boundary line; and that a parallelogram having the measurements named in the *expediente* north, south, east, and west from the Agua Prieta as a center would fall entirely south of the international boundary line.

Mr. Flipper also testified that he made a search for the object given in the expediente as the north center of the grant and found such a monument, it being a pile of stones measuring 70 inches from east to west and 60 inches from north to south, about a foot high, and standing on the summit of a *lomita* on the east side of the valley of the river and at a distance south of the international boundary line of 0.54 mile, and at a distance practically due north from the Agua Prieta of 2.96 miles. (R., 33.) He testified that a line from the monument at Agua Prieta in the direction of the north center monument just referred to and measuring 100 cords, the distance stated in the expediente, would not reach this north center monument, and that a parallelogram built upon such a line running toward the north center monument, said parallelogram having the measurements south, east, and west from the center, stated in the expediente, would be entirely within Mexico. Mr. Flipper testified that he had with him at the time he examined this grant in the field a copy of the original *expediente* of the Agua Prieta grant, and also a copy of the *expediente* of the denouncement of the *demasias* of this grant made before the district court at Guaymas by the Messrs.

Camou and tendered in evidence as defendant's Exhibit A, wherein the limits of the grant were defined by a survey under the Mexican Government, and that said survey was made by one Florencio Rosas, who succeeded in locating what he (Rosas) considered the north center monument of the original survey. Mr. Flipper testified that he identified the natural object called Gallardo Hill (R., 34), the same being south of the international monument No. 82, and said monument being near the foot of the north slope of said Gallardo Hill. He further testified that he found the course from the north center, as identified by him, to the summit of Gallardo Peak to be N. $79^{\circ} 3'$ E. magnetic, which is the course given by Mr. Rosas in his survey of the demasias of the tract from his north center to the same peak; and that in the survey made by one Francisco Dublé, under the Mexican Government, of the north boundary of the Agua Prieta grant, the course from the *lomita* selected by him (Dublé) as the north center to Gallardo Peak is also N. 79° E.; and that the result of this examination was to identify the monument found by Mr. Tipton and witness as the same monument located by Mr. Rosas and also by Mr. Dublé as the north center monument of the Agua Prieta grant (R., 35). The location of the *lomita* found by Mr. Flipper and Mr. Tipton is indicated on a plat which he identifies as correct (R., 35), and which appears in evidence as defendant's Exhibit E (R., 336). The identity of this point with that fixed by Rosas and Dublé will also appear from a reference to the maps of

their respective surveys (R., 210, 252). Mr. Flipper testified that the north center monument, as identified by Rosas, Dublé, and himself is probably a quarter of a mile east from the river, and is also east of the road going up and down the valley.

He also testified that the Rosas and Dublé north center is located on a natural object conforming to the expediente, that is, on the summit of a very small hillock (*lomita muy pequenita*), and that there is also a pass almost due east therefrom, running immediately north of the Gallardo hill or peak, and another pass immediately south of the Gallardo Peak; that this north center is not directly opposite College Peak as indicated by Bonillas's map, but that College Peak bears N. $29^{\circ} 2'$ E. therefrom, and as to whether it was in front of said peak would depend in the meaning of the words "in front of," it being hard to tell what is the front of a mountain (R., 36-37).

Mr. Flipper testified that he went to the pass or *puerto* on the north side of Gallardo Peak, and in which international monument No. 82 is located, and that the wagon road going through that pass has evidently not been used for some time, there being a fence across it, but that on the south side of Cerro Gallardo there is also a pass through which goes a good wagon road over which he had driven, and that he, from information obtained from people in that country, had learned that the pass south of the Cerro Gallardo was known as the Gallardo Pass, and that it is through this pass that the main wagon road from San Bernardino westward now runs. He further testified that he knew

the point delineated in Mr. Rosas's survey (R., 210) as the Puerto de la Silla, and that *puerto de la silla* means saddle pass, the word *silla* meaning primarily a chair, and saddle being its derivative meaning, and that said Puerto de la Silla is the same pass described by witness as the Gallardo Pass. He testified (R., 38) that this Cerro Gallardo stands practically alone, and toward the north, the pass intervening, there is the beginning of the Swisshelm Mountains, which continue thence northward, and that toward the south there is a range of mountains known as the Perrillo, which is separated from the Gallardo Peak by a series of hills more or less detached from the main range; that the Perrillo Mountains run from northeast to southwest, and the Swisshelm run practically the same direction, but more nearly from north to south than the Perrillo Mountains; and that the Perrillo Mountains lie south of west from the Cerro Gallardo, at a distance of about a mile and a half or two miles. Witness further testified that he went to the end of the Perrillo Mountains, where he found the Puerto de la Ceniza located practically as laid down on the Bonillas map; and that he went through said pass and found evidences of a wagon road which had been washed out and was not then passable (R., 39); and that coming northward toward the Cerro Gallardo and between the pass immediately south of the Cerro Gallardo, to which he had already testified, and at a distance of about 2 or 2½ miles south of the Cerro Gallardo there is found another pass, known as the Puerto

de la Misa, through which is evidently a much-used road, and that he had camped on a point in this pass known as the Agua de la Misa, at which there was water, there being no water, from what he could learn, between that and the Cerro Gallardo, or indeed at the latter point, and there being no evidences of any in the Ceniza Pass (R., 39). Just at this point the attention of the court may be recalled to the fact that the *expediente* places the southeast corner of this grant at the pass next south of the east center monument; or, stating the proposition in another way, there is no pass between the east center of the grant and the southeast corner. The importance of Mr. Flipper's testimony as to the existence of this Misa pass, as well as the other testimony in the record on the same subject, lies in the fact that such testimony renders it a physical impossibility, under the *expediente*, that the east center monument of the grant could have been as placed by Bonillas, for the reason that to so place it would be to leave intervening between the east center monument and the southeast corner one and perhaps two passes, when the *expediente* says that the southeast corner is at the pass next south of the east center monument.

Continuing his description of this Puerto de la Misa, Mr. Flipper testified that he went to this pass from the eastern side on a wagon road as far as the water hole, from which water hole there is a wagon road going south to the Puerto de la Ceniza, and another road going into the valley of the Agua Prieta southeasterly to the headquarters ranch of Mr. Camou at Cabuyona,

and on to the town of Fronteras; that wagons have also gone over this road to the Agua Prieta pond (R., 40), and that the Misa Pass is an excellent place for a wagon road, there being no obstacles of any kind, the pass being open and of such ease of access as to justify its being considered a narrow valley instead of a pass.

Coming to the matter of a road from Santa Cruz to San Bernardino, which plaintiffs' testimony indicated passed on the north of Gallardo Peak, Mr. Flipper testified (R., 40) that this road was built by Lieutenant-Colonel Cooke, who was sent out by the Secretary of War to build a road in the years 1851 and 1852, or possibly earlier, which fact he knew by reading. On objection to this line of testimony the Government produced in evidence the diary of Lieutenant-Colonel Cooke, together with a sketch of part of his march and wagon road, as defendant's Exhibits A-1 and A-2 (R., 337-339), and also extracts from the report of the Mexican boundary survey as defendant's Exhibit A-3 (R., 340). It seems proper at this point to call the attention of the court to the fact that the sketch introduced as defendant's Exhibit A-2 shows the course of Lieutenant-Colonel Cooke's march and wagon road to be along the line shown as the old overland road on the Bonillas map, and that his report (R., 338) shows that such road was constructed by him by cutting his way "through dense thickets of mesquite and many other varieties of bushes, all excessively thorny;" and that in writing the governor of Sonora on December 18, 1846 (R., 339), he speaks of the fact that he was

making a wagon road "from the streams of the Atlantic to the Pacific Ocean, through the valuable plains and mountains rich with mineral of Sonora;" and that in the report of William H. Emory as to the boundary survey, presented as defendant's Exhibit A-3 (R., 340), the route taken by Colonel Cooke in 1846 is referred to.

Mr. Flipper also testified that there was a road from Santa Cruz to San Bernardino by way of Fronteras, and that Fronteras was in olden times a presidio, or garrison, for soldiers (R., 40), and that in olden times, so far as his information went, there was no other presidio between Santa Cruz and San Bernardino, or located that far north; and that the country north of Fronteras was, in olden times, overrun by Indians, as stated in the title papers. He also testified that the Spanish word *puerto* means a pass or a door, and that both the Puerto Gallardo and the Puerto de la Misa, testified to by him, were *puertos* within his idea of the definition of the Spanish word (R., 41). He also testified that in the vicinity of the Puerto de la Silla, as located on the expedientes from Guaymas, introduced as defendant's Exhibits A and B, which, it will be recalled, is at Gallardo Pass, there are both large *lomas* and small *lomas*, which are near higher *lomas*, and that there are quite a number of *lomas* on both sides of said pass (R., 41). The relevancy of this testimony will be noted, in view of the recitals of the expediente that the northeast monument of the grant was ordered placed near Saddle Pass on a small hillock

(*loma*) which is to the right and near two others that are higher. This testimony of Mr. Flipper shows that these natural objects are present in the immediate vicinity of the Puerto de la Silla, as located by Mr. Rosas in his Mexican survey, and which, in the view of the Government, is the northeast corner of the grant now under consideration. Mr. Flipper also testified that he found a monument on the summit of a large *loma* close to the Cerro Gallardo and between two passes running respectively north and south of that cerro (R., 41), and that a line run eastward to that *loma* or to other *lomas* on the west side of Cerro Gallardo from the north center monument, as identified by him, would fall entirely in Mexico, and that a straight line running from the north center monument, as located by Mr. Rosas on his survey to the northeast corner, as located by Rosas, would also lie entirely within the Republic of Mexico (R., 41).

He also testified that in the vicinity of the Misa Pass and at its western opening and to the left thereof, as one enters from the west, there are a number of *lomas* situate at and near the foot (*falda*) of the range. The relevancy of this testimony will also be seen by a reference to the *expediente* (R., 41), from which it appears that the parties were ordered to place the monument on the east center of the grant on a high hillock (*loma*), which is to the right of the pass where the old road passes from Santa Cruz to San Bernardino; this testimony showing that the natural objects (*lomas*) called for by the *expediente* exist in abundance at the entrance

of this Misa Pass, through which it is contended by the Government the old road mentioned in the expediente ran.

Testifying as to the northwest corner of the grant, Mr. Flipper testified (R., 42) that the Naidenibacachi Mountains constitute the natural west wall of this grant, and that looking from the north center monument of the grant, as identified by Mr. Rosas, due west, a number of small *cerritos* come into the range of vision, and that setting the instrument on the Cerro Gallardo, which is the northeast corner of the Rosas's survey, and turning the instrument over on a continuation of the same course west, there is found a small *cerrito* at the north end of the range; that this *cerrito* lies in Mexico, so that a line run from the north center monument to this *cerrito* would lie wholly in Mexico. Concluding his direct examination, Mr. Flipper testified (R., 43) that based upon his examination the *loma* identified by Mr. Rosas was, in the opinion of witness, the north center monument of the grant; that the Puerto de Gallardo was what was known at the time of the grant as the Puerto de la Silla, and constituted the northeast corner of the grant; that the *cerro pequenito* just mentioned was the northwest corner, and that these three points fixed the north line of the grant, and that such line would be in Mexico, and consequently the whole of the grant was in Mexico.

On cross-examination Mr. Flipper testified that the Agua Prieta and Los Sauces or clump of willows were correctly designated on the Bonillas map (R., 44);

that the Agua Prieta according to his map was 3.50 miles south of the international boundary line, and according to Bonillas's map was 3.46 miles south of the international boundary line; that the old ruins of San Bernardino were about one-fourth of a mile south of the international line; and that Santa Cruz is about 7 miles south of the international boundary line. Being shown a tracing of the international boundary line, contained in the record as plaintiffs' Exhibit R (R., 185), he testified that there were several high hills on the right of the pass through which goes the old road from Santa Cruz to San Bernardino, as shown on said map, but that said map does not correctly represent the topography out there; but that there is a high hillock to the right of said road and said hillock, which is distinct from Gallardo Peak, is correctly represented on the Bonilla's map. Witness stated that he did not go to the west center as identified by Mr. Bonillas, or to the southwest corner, but that he did go to the southeast corner and found the pass at which it is located; that he visited the Perrillo Mountains, which are on the same range with the Swisshelm Mountains, being the names of merely sections of said mountains. Witness stated that he did not go to the northeast corner of the Bonillas survey at College Peak. He called attention to the fact that while on the map introduced in evidence as a part of defendant's Exhibit A the *lomita* identified as the north boundary is apparently at the international boundary line, it is in reality fifty-four hundredths of

a mile south of it, the difference between the facts and the appearance on the map being due to the very small scale on which it was drawn (R., 47), and that while there are hillocks all along the river on both sides of its length, this was the only one he found going northward from the center monument with a monument on its summit. He testified that the town of Fronteras was probably 35 miles from the international boundary line; also that the approximate distance between the Cerro Gallardo and the Misa Pass is between 2 and $2\frac{1}{2}$ miles (R., 48), and that the Rosas map introduced in evidence as defendant's Exhibit A (R., 210) purports to locate four of the monuments according to the original *expediente*, to wit, the north center, the northeast, the south center, and the southeast monuments. Referring again to the Bonillas map, Mr. Flipper testified that in the vicinity of the northwest corner, adopted by Bonillas, there was a small hill, but as to whether there was any monument upon it he did not know, not having been to it; but that he had been to the south center monument (R., 49), and that it was correctly designated on both of the maps (apparently meaning the Bonillas and Rosas maps); that he did not find the pile of stones alleged to be at the southeast corner of the Puerto de la Ceniza, although he had hunted diligently for it, going from the east to the west side of the Ceniza Pass, following the trail of an old wagon road. Witness also testified that there is a high hill or *loma* south of the pass just north of Gallardo Peak, on said *loma* there being two large

monuments or piles of stones on a line nearly north and south, and that there were higher hills to the north of this *loma alta*, although not immediately close to it; that both of these monuments appear to be recent (R., 49-50), and that as to whether there was a pile of stones with a cross upon said hill (a circumstance upon which Bonillas laid some stress), witness testified that that pile of stones might be called "a cross or crescent or a , according to one's imagination," and that this *loma alta* is correctly located on the Bonillas map. Witness stated that he did not know whether there were any passes in the mountain between this *loma alta* and College Peak, as located by Mr. Bonillas; that the east center monument of this survey is near the mouth of the Puerto de la Misa, which should be located on the Bonillas map something like 2 miles south of the west entrance of the Puerto de Gallardo; that the east center when properly located would be 2 or $2\frac{1}{2}$ miles south of the Bonillas east center, and that the southeast corner of the grant would be about where Bonillas has it (R., 50). Witness denied that he had stated that there were not two other higher peaks near the east cruz monument as located by Bonillas, but on the contrary asserted that west of it there are several other higher peaks, although not immediately near it. He further testified that he had been through this Perrillo chain from east to west, starting from the Cerro Gallardo on his first trip, and subsequently going to the eastern foot of the Puerto de la Misa in a carriage, and then across

on foot to the Puerto de la Ceniza; that he went through the Ceniza Mountains from San Bernardino down to Agua Prieta in a carriage entirely across the range from one side to the other, and that this trip was taken through the Puerto de la Misa (R., 51); that there is a road on the west of the Perillo Mountains coming east through the Misa Pass, and it is a very good road and as plain a road as one could get, and that so far from the country being precipitous in character, this road is as good a road as one could find (R., 52); and that this road joins another road at Gallardo Pass, and then goes on to San Bernardino. Witness reiterated his belief that the point taken by Rosas as the north center monument was the north center, because it agrees with the description in the original title papers, and that such belief is based on the theory that the point described by Bonillas as the east center monument is in fact the northeast corner monument; and he stated that the correctness of his survey is dependent upon this basis. On redirect examination, referring to Cooke's road hereinbefore mentioned, Mr. Flipper testified that upon inquiries made from people living in that country, upon his first visit in 1886, he was told that that road went through Gallardo Pass and had been opened by Lieutenant-Colonel Cooke prior to the treaty, and that it was used afterwards by emigrants going to California, and that that road is the same road as the old road laid down by Bonillas. He also testified that the lomas that were near to the other lomas at and

about Gallardo Pass are about a mile distant therefrom, and that there were also some small lomas in that vicinity and also numerous lomas other than this one on which was found this pile of stones (R., 54); that his identification of the Los Saucer as the proper south boundary of the grant was based, not upon an examination with that question in view, but simply upon a general idea derived in surveying in that vicinity in 1886, when he had occasion to follow the boundaries laid down in the expediente and claimed by the then owners, and when he followed the location of the north boundary laid down by Mr. Rosas. (R., 54.) Referring again to the range of hills seen from the north center monument of the grant, and in which is located the northwest corner of the grant, he testified that this range of hills was entirely south of the international boundary line and was southeasterly from the Mule Mountains. Referring to the wagon road emerging from the Misa Pass and going westward to Fronteras, he testified that said road had the appearance of being well traveled recently, and that on the east side of the Perilló Mountains there is a road from the Puerto de la Misa to the Puerto de la Ceniza. Witness further testified that the pass north of Gallardo Peak is a separate door or pass in the mountain from that south of the peak, and that the Puerto de la Misa is also entirely separate from them, cutting the range of mountains 2 or 2½ miles from them and at a point about the center of the range of mountains as laid down by Bonillas on his map. Mr. Flipper testified that from the Agua Prieta

the center point of the west entrance of the Puerta de la Misa bears N. $87^{\circ} 33'$ E. magnetic, thus lacking about 2 degrees of being true east; that the surface of the grant in the vicinity of the Cerro Gallardo is very rocky, there being loose rock all over the grant in that vicinity in great abundance everywhere (R., 57), a fact throwing some light on the readiness with which Bonillas was able to find piles of stone there.

On further cross-examination, in answer to the question of whether witness had made any inquiries of Mr. Eduardo Camou, one of the witnesses for the plaintiffs, and the manager of the ranch near Agua Prieta, upon his visit there in April, 1899, as to the road from Santa Cruz to San Bernardino; Mr. Flipper replied that he had asked Mr. Camou if he could point out the natural objects of this grant, but was told by him that he did not know any of them, but that his *mayordomo*, Jose Montaño did, and thereupon he, Montaño, came and went with witness and showed the natural objects, as Camou's father had an interest in the grant; but that Eduardo Camou did not point out anything. (R., 58.) Witness, concluding his recross-examination, testified that the hill upon which Bonillas located his east center monument was not a *loma pequeñita*, the designation used in the title papers for the northeast corner of the grant, but that there is in that vicinity quite a number of *lomas pequeñitas*. Witness further testified that a road from Santa Cruz to San Bernardino, passing as indicated by Mr. Bonillas on his map, would not go through the first pass to the north of the Puerto de la

Ceniza, but, on the contrary, would come through the third pass north thereof, there being, as will be recalled from the testimony, two passes intervening, one immediately south of Gallardo, and the other the Misa Pass.

William M. Tipton, being sworn on behalf of the Government, testified as to his being special agent of the Court of Private Land Claims, and to his experience in land surveying (R., 59, 60), and to his having visited the Agua Prieta grant in company with Mr. Flipper and the assistant United States attorney, Mr. Wm. H. Pope, in the month of April, 1899; that he assisted Mr. Flipper in making the measurements to which the latter testified on the stand, and that said measurements are correct; that he went with Mr. Flipper to the point to which the latter testified as being the north center monument of the grant, and that said monument was at a point a very little over half a mile from the international boundary line. (R., 60.) Describing this monument, Mr. Tipton spoke of it as not being over a foot or 15 inches in height and measuring 70 inches across one direction and 60 inches on the other, and having evidences of having existed for a considerable time, said monument being located on the top of a small hill in the valley of the Agua Prieta and on the east side of what might be called the Agua Prieta River and about one-fourth of a mile distant therefrom. Mr. Tipton testified that the north center monument is more than 100 cords from the Agua Prieta, being very nearly north thereof, and that a parallelogram laid off, having as its north side an east and west line

running through a point 100 cords true north of the Agua Prieta would lie entirely within the Republic of Mexico, and that a parallelogram having its north side running east and west through a point 100 cords from the Agua Prieta and on a course to the north center monument, as identified by Mr. Flipper, would also lie entirely within the Republic of Mexico. He also testified that he took an observation of the course from the north center monument, as described by Mr. Flipper, to what is known as the Gallardo cerro or peak, and found such course to agree with that given by Mr. Rosas in his Mexican survey, thus identifying the north center monument identified by Mr. Rosas with that identified by Messrs. Flipper and Tipton (R., 62); and that looking westward from said north center monument, after crossing the flat portion of the valley of the Agua Prieta, there are some hills forming the first bench, which extend for 5 or more miles without increasing much in height, and beyond that toward the international boundary line there is a range of hills which appears to be separated from what is called the Naidenibacachi Mountains by a pass. Said range runs toward the international boundary line, but terminates a short distance south thereof. At the end of this range and south of the international boundary line there are a number of *cerritos*, or small hills (R., 62), and on a course S. 79° 3' W., magnetic, from the north center monument, being the reverse of the course taken to the monument on the Gallardo Peak, there is found one of these hills;

that the Mule Mountains lie a little to the north and west of these *cerritos* or hills, with open country intervening, and that looking from the north center monument the north end of these hills are almost directly west, and form horizon in that direction. Mr. Tipton testified further, that looking directly east from the center monument the Ceniza mountain range formed the horizon in that direction. From said center are visible two breaks in this Ceniza mountain range, one of them toward the north end of the range, known as the Puerto de la Misa, and the other farther south, known as the Puerto de la Ceniza (R., 63); to both of which points, as well as to the Cerro Gallardo, witness went (R., 64). He further testified that this Cerro Gallardo is south of the international boundary line, and that there is a puerto or pass to the north, in which the international monument 82 is located; that he made an attempt to go through this pass with a vehicle, in company with Mr. Flipper, but found access extremely difficult, the road being obstructed by a wire fence in which there was no gate, and which stopped them from going farther east; that there is another puerto or pass southwest from the pass just mentioned and on the south side of Gallardo hill or peak, through which there is a wagon road and through which witness went twice in a vehicle, the road through that pass being a very good, well-traveled road. Witness also testified that the next pass toward the south, the Puerto de la Misa, was visited twice by him; that he spent a night there in camp, and also the next day, there being there two

water holes in said pass; that witness ascertained the water to be called the Agua de la Misa, and the name of the pass to be the Puerto de la Misa; that this was ascertained upon inquiry of different parties, as to locality, among others of Jesus Montaña, the foreman at Camou's Cabuyona ranch in that section. Witness further testified that there is a wagon road through this pass and that said pass is between 2 and 3 miles on a straight line from the Cerro Gallardo; that he went from the Cerro Gallardo to this pass over a wagon road, that route being from one-half to three-quarters of a mile farther than on a straight line; that he went over the road through the Misa Pass once entirely from one side of the mountains to the other, and the second time he went from the east side as far as the Agua de la Misa over the wagon road running from said water hole to the east side, so that he went entirely through the pass once and practically one-half way through it again (R., 65); that the wagon road is a very good one, and there are few if any places upon it that are steep, and so excellent is this road that the first drive took only three-fourths of an hour to drive from the south base of the Cerro Gallardo to the Agua de la Misa; that at its eastern end the road joins the road passing through Gallardo Pass in the direction of San Bernardino, and at its western end the road has the appearance of being well traveled going in the direction of Cabuyona, and there is also a trail from the western end toward what is called Sulphur Spring, a trail evidently used by horses and upon which there

are wagon tracks; that on the east side there is also a wagon road running south from the Agua de la Misa along the line of the mountains to what is known as the Ceniza Pass, but which is not so well traveled as the one coming clear across the mountain toward Cabuyona; that this road through the Misa Pass joins the road going through the Gallardo Pass at what might be called the west end of the Gallardo Pass, and after one gets through that Gallardo Pass going east there is another road coming in west of the Mescal factory (R., 66). Witness testified that he went to the Ceniza Pass, which in his judgment is 5 or 7 miles from the Cerro Gallardo; that he went into it in a westerly direction along the road coming from the Puerto de la Misa, a mile and a half or more, and found evidences of travel in the shape of an old road through the pass and several trails on both sides of the pass. (R., 67.) Witness took an observation from the Agua Prieta, or center monument to what appeared to be about the center of the Puerto de la Misa, being about N. 87° E., the exact course being shown by Mr. Flipper's notes that Gallardo Peak is a little north and east of the Ceniza Mountains, as laid down on the Bonillas map, and is disconnected therewith, there intervening some foothills, the main range running off toward the southwest, and said Cerro Gallardo being separated from the mountains to the north and the foothills appurtenant to said mountains by a pass which is located at international monument 82.

On cross-examination Mr. Tipton testified that the sources from which he received information as to the

locality were Montaña, the man furnished by Mr. Camou, and another cowboy, whose name witness did not know; that Mr. Eduardo Camou was asked in his presence in regard to the tract generally and stated "that he was not well acquainted with the names of places in that vicinity, but would send us a man who was." (R., 68.) It may be here noted that Mr. Camou was subsequently sworn on the trial of the cause both to testify as to his knowledge of the locality and to the lack of knowledge of the locality by Montaña, and this in spite of the fact that he had stated at the time of the investigation in the field, as just noted from Mr. Tipton's testimony, that he was *not* acquainted with the locality, but would send Montaña, whom he represented to be well acquainted with it. Mr. Tipton further testified that he had not been to the northwest corner indicated on the Bonillas map, and did not know whether there was a small hill at that point or not, nor had he been to the west center monument or southwest corner of the Bonillas survey, nor had he been to the south center monument at the willows, although he had been in the immediate vicinity thereof; that he was at the Ceniza Pass, but did not there find the monument to which Bonillas referred, and that he had found near the Gallardo Peak evidences of an old road, in going along which witness was stopped by a wire fence (R., 89); that witness did not see the east center monument adopted by Bonillas, and that the high hill on which it is alleged to have been placed was, in his opinion, a sort of spur of the

Gallardo Peak, running off to the west, the international monument not being on the slope of this hill, but on that of the Gallardo hill proper (R., 69), and Mr. Bonillas's map did not, in his opinion, correctly represent the location of the Gallardo Peak (R., 69).

There was also tendered in evidence on behalf of the Government (R., 69) an extract from the report of Lieut. P. St. George Cooke of his march from Santa Fe, N. Mex., to San Diego, Upper California, with map thereof (R., 69-70, 337-340), to which reference has already been made, and also extracts from the United States and Mexico survey by Major Emory (R., 70, 340), to which reference has also been made; also (R., 70, 340), a portion of the plat of the international boundary line, being a continuance eastward of the section of this plat, introduced by plaintiffs as Exhibit R, said plat introduced by the Government being defendants' Exhibit A-4.

In rebuttal claimants recalled Ignacio Bonillas, who made the survey upon which they relied, and who testified (R., 70) again to his acquaintance with the country in the neighborhood of the Agua Prieta and east of the Ceniza or Perrillo Mountains and in that vicinity to the south of the Cerro Gallardo. He testified that for about 2 miles south of the Gallardo Peak there is a series of low hills, there being some high topped hills to the southwest; that witness had never in his investigation heard of the pass called Misa Pass, and that the pass termed by the witness for the Government (R., 71) the Misa Pass is not, in his opinion, a separate

pass from the Gallardo Pass, "because it is not a pass that goes from the southeastern side." Being asked if there was a separate pass between the north end of the Ceniza Mountains and the Ceniza Pass, witness answered "Not that I know of; not that I consider a separate pass from the Gallardo." He testified that the roads immediately north and south of Gallardo Peak are practically the same road, being simply detours around that peak and meeting again at a point not over a half mile east of the Gallardo Mountain, whence they follow into the San Bernardino Valley (R., 71); that there has never been until very recent times a wagon road through the pass termed by Government witnesses the Misa Pass, and that there is not now and never has been a wagon road through the pass described as the Puerto de la Ceniza (R., 72), but that you can go to the San Bernardino Valley across the Ceniza Pass, and to the east; that people living to the east of the Perrillo Mountains and from 5 to 10 miles south of the international line go to the west thereof by way of San Bernardino through the Gallardo Pass, and that if there were a wagon road through the Ceniza Pass or the Misa Pass it would be used by them, since it would save perhaps 10 or 20 miles. Witness was asked this question:

Q. I will ask you this question: Is there any traveled wagon road south of the road south of the Gallardo Peak, between that and the Ceniza Pass?

To which he replied:

A. No wagon road.

This question and reply can be accounted for only on the theory of the willingness of the witness to testify to any state of fact, either true or false, necessary to support his survey, it being in the face of the physical fact absolutely beyond controversy, as established by the testimony of Messrs. Flipper and Tipton, and attested by the experience of the writer, that there is such a road, and one over which the persons representing the Government had, within six weeks before the trial, traveled repeatedly in a vehicle.

On cross-examination (R., 73) witness apparently modified this misrepresentation of the physical facts by stating that there is no traveled road running from the Agua Prieta to the San Bernardino Valley "that I know of, through the Puerto de la Misa." He admits, however, in the same breath (R., 73), that there is a horse trail upon which parties can go on horseback and upon which he had gone repeatedly, said trail having been used in connection with the distillery, years prior to 1895, to bring wood and other material from whatever part of the Ceniza Mountains they could find it, and from both sides or both slopes of the mountains, and that this road constituted an avenue through which they could secure material for this distillery from the west slope of said Ceniza Mountains. In view of the fact that this distillery is on the east side of the mountains, and this trail or road through the Ceniza Pass was, years ago, used to bring material thereto from the west side of the mountains, it would seem to come clearly within the definition of a mountain pass, which, as given by Mr. Bonillas (R., 75), is a

"depression in the mountain chain through which you can go, maybe, with vehicle or horseback."

Witness further admitted on cross-examination (R., 74) that there is a road going out from the Puerto de la Misa to the Agua Prieta Valley, and that one can go through that depression and then go north to the Agua Prieta Pass to the east "without going through the Gallardo Pass." Being asked if, as a matter of fact, there is a pass in the Ceniza Mountains, right in the middle of them (R., 74), witness said that he did not think so; that his idea was that that pass is the same as the Gallardo Pass, and that he never knew a wagon road to go from the Puerto de la Misa to Fronteras, but that such a pass as the Misa Pass would afford a shorter method of going from Fronteras to San Bernardino than the Gallardo Pass (R., 75); that the old overland road marked on his map runs over the north end of the Ceniza Mountains, entering the Puerto de Gallardo or Gallardo Pass perhaps 2 miles west of the Gallardo Mountains (R., 77); that the distillery (to which, it will be recalled, witness had already testified this trail through the Puerto de la Misa was tributary) was abandoned in the early nineties (R., 77), thus showing that said trail was of considerable age.

John H. Slaughter, being sworn on behalf of claimants, testified that he had lived in Cochise County since 1879 and knew the Ceniza Mountains and also the Gallardo Peak (R., 78), and that people in going from the valley east of the Perrillo Mountains to the Agua Prieta and to Bisbee went on a road right by his ranch

(San Bernardino) and right south of Gallardo. Witness further testified (R., 79) that between the road immediately south of Gallardo and the Ceniza springs there is no wagon road that he knew of "unless it is a timber road;" that he did not know of any such wagon road used by people crossing the mountains and had never heard of the pass called the Misa Pass (R., 79). In view of the fact that witness testified (R., 78, 81, 82) that he did not know the Ceniza Pass, a point identified by all the witnesses, his lack of knowledge of the Misa Pass does not tend to any great extent toward establishing its nonexistence. Witness admitted (R., 80) that there was a wood road over the mountains from the Mescal ranch between Gallardo Pass and the Ceniza springs. Witness testified (R., 82), in response to a question as to whether there is a pass north of the Ceniza Pass, that "parties can go on horseback over any of these mountains," and he admitted that while he did not know the Puerto de la Misa, situate about $2\frac{1}{2}$ or 3 miles south of Gallardo Peak, by that name, "*there may be such a place.*"

Eduardo Camou, sworn on behalf of the plaintiffs, testified (R., 83) that he was acquainted with the place called Agua Prieta and surrounding country, having crossed the Ceniza Mountains at the Puerto de la Ceniza on horseback, and having crossed the mountains at the Gallardo Pass in a vehicle over a well-traveled road to the north of Gallardo Peak; that people from Bavispe and other points south cross the Ceniza Mountains in wagons at the Gallardo Pass, which is the only pass

where parties can so cross, although witness admits (R., 84) that there is a road south of Gallardo, used for wood and *mescal* plant. Witness disclaimed any knowledge of the Misa Pass, but admitted that there is a place about 2 miles south from Gallardo known as the Agua de la Misa.

On cross-examination Camou testified (R., 84) that his father is the owner of the Agua Prieta grant; he admitted that he had been asked by counsel for the Government, on the ground, as to some of these natural objects to which he had referred, and acknowledged that he had then stated that he knew very little about the natural objects down there, but that he would send a man that did know about them, and that he thereupon sent with the Government representative his *mayordomo*, Jesus Montaña, who had been with him eight years, and whom witness then represented as a person thoroughly familiar with the country around there, and who would describe these places to the representatives of the Government. Witness admitted (R., 85) that this Agua de la Misa is on the *east* side of the Ceniza Mountains. As the proof is overwhelming that there is a road from the Agua de la Misa to the Agua Prieta Valley, this admission by witness is in effect the admission of a road and a pass through the Ceniza Mountains at the point contended for by the Government as Misa Pass, a physical fact which witness, however, in terms denied (R., 85), stating not only that there was no road through the mountains between the Gallardo Pass and the Ceniza

Pass for wagons (although the representatives of the Government had two months previous thereto ridden through such pass upon a well-traveled road) (R., 85), but that *there never would be one*. Witness admitted, however (R., 86), that while there was no wagon road through this Puerto de la Misa, he had been through it on horseback upon a trail.

On redirect examination the attorney for plaintiffs attempted to secure from witness a statement as to the Spanish name applied to the pass at the northeast corner of the Bonillas survey, but despite the alleged acquaintance of witness with the country and the alleged notoriety of the name Silla Pass as applied to that place, witness was unable to give any answer on the subject (R., 87).

Colin Cameron was also (R., 91) sworn on behalf of plaintiffs, and testified that his residence is Lochiel, Ariz., at which place he had lived since 1882; his occupation, ranchman, and that he had a general acquaintance with the country involved in the suit, having traveled over it in going to San Bernardino and also in his business as ranchman, the wagon road over which he was accustomed to travel being that going by Gallardo (R., 92). Witness stated that he had been through the Gallardo Pass many times on horseback and wagons; the present road going through on the south side, but the old road having been on the north side, this pass, in his opinion, having no resemblance to a saddle, and so far as witness knew never having been called Saddle or Ceniza Pass. Witness was further asked (R., 93) if there was any pass

in Cochise County that resembled a saddle, but on objection the question was withdrawn. Witness further testified that he did not know any pass in the Ceniza Mountains or elsewhere called the Misa Pass; that while he had crossed these mountains at points south of the Gallardo road on horseback, it was not possible to cross them in a vehicle for many miles south; that there was no "practical" wagon road at the point marked *x*, the west entrance of the Puerto de la Misa, as testified to by the Government witnesses (R., 89); that people from the southeast of Gallardo, in the State of Sonora, cross the Ceniza Mountains through Gallardo Pass, there being no other place to go through with wagons (R., 93). Witness stated that he had gone through a trail, at about the place marked X (R., 94), on horseback as early as 1886, but did not think he ever saw a wagon trail there used, it being impossible for them to go there, and that to go from Santa Cruz to San Bernardino by Fronteras would be entirely out of the road, Fronteras being a good days' ride south of the route at present pursued.

On cross-examination witness stated that he was the claimant before the court in the San Rafael de la Zanja grant, on appeal to this court under the title of *Christie v. United States*, No. 129, October (1901) term, and that he had a small interest in the Agua Prieta grant (R., 95), and that his residence at Lochiel was over a hundred miles from the country in controversy, but that he considered himself entirely familiar with the country; that the next trail south of the Gallardo

Pass is between 2 and 3 miles distant therefrom, and that he had been through that trail and pass, and that said pass $2\frac{1}{2}$ miles south of the Gallardo Pass is "*a pass that one can go through*, and if a man is in a great hurry he could go quicker on the other side of the river, but a man, unless he has some urgent business, he will always ride the wagon road" (R., 95-96). Witness further testified that he had been through this pass on horseback three or four times; that there is a water hole on that pass, and said water hole is just by the trail and on *the east side of the range*.

This testimony of Cameron actually describes the very pass which the Government witnesses testified to, and shows, despite the assertions of Bonillas and others to the contrary, that there is a pass at the point for which the Government contends.

Witness further testified (R., 96) that the route through the trail or pass $2\frac{1}{2}$ or 3 miles south of Gallardo, was a shorter method of going from Fronteras to San Bernardino than by Gallardo, and that while there was no wagon road when he was last at that place it is possible to get a wagon road there. This concluded the testimony for plaintiffs.

Mr. Tipton, being recalled by the Government (R., 88), testified as to his having taken a bearing from the Agua de la Misa to the Gallardo Peak, finding the true course to be N. $13^{\circ} 9'$ E., and the distance, according to an estimate based upon having traveled over the ground and timed himself upon so traveling (R., 90), to be between 2 and 3 miles. Mr. Tipton

indicated on the Bonillas map in evidence (R., 88), by the letter Z, the location of the Agua de la Misa, and by the letter Y, on the same map, the point where the road through the Agua de la Misa joins the road going by the Gallardo Peak, and by the point X, on the same map (R., 89), the point on the same road at the west base of the Ceniza Mountains, the line *X Z Y* representing the course of said road from the west foot of the Ceniza Mountains, *through* the mountains via the Agua de la Misa, to the junction of the road with the Gallardo road (R., 89).

Mr. Flipper, recalled on behalf of the Government (R., 90), testified also as to the bearing taken by himself and Mr. Tipton from the Agua de la Misa to the summit of the Cerro Gallardo, that bearing being N. $13^{\circ} 9'$ E., as testified by Mr. Tipton. Mr. Flipper also testified (R., 90-91) that the junction of the two roads, one by Gallardo and the other through the Puerto de la Misa, was at the point marked Y, the Agua de la Misa being at the point Z, and the west entrance of the Puerto de la Misa being at point marked X, and that the wagon road connecting these points runs entirely through the mountains from one side to the other. Witness testified that, going westward from the point marked X, he left a well-defined road going southwest toward the valley (i. e., toward Cabullona and Fronteras), and that he himself went over what had been a trail to the point marked "Sulphur Springs" on the Bonillas map, said trail having evidently been used by wagons, but not being a well-defined wagon road (R., 91).

Gavino Ariaga (R., 96), sworn on behalf of the Government, testified as to his living at Santa Cruz, Mexico, where he was born, and as to his acquaintance with the country; that the first wagon road he saw at Santa Cruz belonged to the first Americans who passed on the boundary commission; that wagons were not used around Santa Cruz at that time; that there were no wagon roads coming into Santa Cruz at that time, nor was there any wagon road from Santa Cruz to San Bernardino prior to the opening of this one by the Americans (R., 97).

The Government also presented in evidence, as defendant's Exhibit A (R., 190-212), a certified copy of the expediente of denouncement of the *demasias* of the grant here in controversy, made by the owners of that grant, the Camous, before the Mexican tribunals by proceedings initiated on April 22, 1880. This proceeding is exceedingly instructive, when taken in connection with the map accompanying it, in showing the theory of the Mexican owners of the grant as to the proper location of this grant, and the result obtained by the Mexican authorities in surveying this grant in the presence of such Mexican owners, with their participation, and with all the assistance that could be given by them toward its proper location; and the result of said proceedings establishes very clearly, as contended by the Government, that this grant, whether surveyed by quantity or outboundaries, is entirely within the Republic of Mexico.

On April 22, 1880, José Camóu, son, reciting (R., 212) that he is the owner of certain lands on the

north boundary of the State of Sonora, but in the district of Arispe, known by the names of Agua Prieta, Santa Barbara, Naidenibacachi, Agua de Baltazar, Lo del Gato, Lo de Tomas Romero, and Lo de las Mesteñas, the boundaries of which are set out in their titles, which petitioner promises to present at the proper time, presents an application to the district judge at Guaymas asking that he be allowed to acquire the overplus (*demasias*) in said tracts, if there should be any, after survey, and to that end denouncing said *demasias*, and protesting that he will make proper payments in the terms designated by the law on the matter, and requesting the appointment of the citizen Florencio Rosas as surveyor. On May 31, 1880, the district judge of Guaymas admitted the denouncement referred to in said petition, but without prejudice to a third party who may have a better right, and thereupon appointed the citizen Florencio Rosas to proceed, after his acceptance and oath, and after citing all the adjoining owners and presence of their titles, *to the resurvey and making of the maps* of the lands called Agua Prieta, Santa Barbara, Naidenibacachi, and the four other tracts mentioned (R., 212), with directions to said surveyor that he take special care to make the survey of each of said lands separately, designating both in the minutes of the survey and on the several maps the overplus (*demasias*) each may contain according to their corresponding property titles, subjecting himself to the laws of "July 20" and August 2, 1863, and thereupon forwarding the original pro-

ceedings to the court for further action, but directing that unless the proceedings were executed within ninety days the denouncement would be considered abandoned.

Thereupon, on August 17, 1880 (R., 213-214), upon inquiry of the public treasury as to whether the latter was in possession of the lands denounced, it was replied on August 19, 1880, that it was not known whether the lands referred to were in the possession of the public treasury or not.

On June 9, 1880 (R., 216), there were summoned the parties in interest, to wit, Josè Camou, son, Josè Maria Elias, the municipal president of the towns of Fronteras and Cuquiarachi, also the surveyor-general of the Territory of Arizona, United States, to be present in person or by attorneys "at the place called Agua Prieta on the 28th day of the present month, to defend the boundaries of their properties, in view of their titles, in the survey that will be made on that and the following days."

On the 28th day of June, 1880 (R., 217), the party in interest, Jose Camou, son, represented by Pascual Camou, appeared at the place designated, as did also the municipal president of the towns of Fronteras and Cuquiarachi, when the following occurred, according to the recitals in the *expediente*:

It was made known to them [by the undersigned surveyor] that the survey or resurvey would be commenced from the north cardinal monument of Agua Prieta, *because that one was well known*, and the titles refer to it as a small

hillock (*lomita pequeña*) situated in the valley of the Agua Prieta toward the east, and a pile of stones is found on its summit or its highest point, and, *there being no opposition whatever*, the course N. $79^{\circ} 03'$ E. was observed, and there were measured thirteen thousand and ten (13,010) meters to the summit of *the Gallardo hill (cerro) in Saddle Pass, which the titles call for*. A monument was found at the north base of said hill (*cerro*) and serves as a division between the Republic of Mexico and that of the United States.

It is to be recalled, just at this point, that the north cardinal monument of the Agua Prieta from which the survey was made, because "that one was well known," is the very monument which Mr. Bonillas was unable, in making his remarkable survey, to locate, and is the very monument which Mr. Flipper and Mr. Tipton located as the north center monument of this grant; and it is also worthy of note that this "well-known" north center monument, which was selected in the presence of the owners of the Agua Prieta grant, was selected with "no opposition" from them, but was accepted by them, and, as will be hereinafter seen, was the basis of the patent issued to them; thus showing that not only was this monument "well known" as the north center monument by the public generally, but was accepted by the owners themselves as the north center monument. It is further to be noted, from the proceeding above quoted, that there was no difficulty in locating the Gallardo hill (*cerro*) in Saddle Pass, as being the place "the titles call for" as the northeast

corner; but that, on the contrary, with the owners of the grant present and the owners of adjoining property all on hand, the Mexican surveyor readily located this northeast corner at the Cerro Gallardo, the point claimed by the United States, and not at a mountain peak ten miles farther north in American territory, as was done by Bonillas.

The survey of June 28, 1880, continues as follows (R., 217):

Thence on a straight line along the whole of the Perrillo Mountains, course S. $3^{\circ} 41'$ E., there were measured fourteen thousand and fifty-one (14,051) meters to a small, low, rocky hillock (*lomita*) at the base of said mountain, where a pile of stones was made, as the old monument was not found. Thence following the perimeter the titles indicate, an observation was made S. $79^{\circ} 03'$ W., and there were measured eight thousand one hundred and three (8,103) meters to the monument at the willows the titles call for, and on a hillock (*loma*) close to said willows a pile of stones was formed to serve as a provisional monument, which should be placed in the willows.

This last is apparently the same as the south center monument shown on the Bonillas survey, but it is evident that the southeast corner as fixed by Rosas is not the same as that fixed by Bonillas. The relative location of the points just described will appear from an inspection of the map embodied in this Guaymas *expediente* (R., 210), as compared with the Bonillas map (R., 24).

The remainder of the survey made by Mr. Rosas pertains to grants, other than the Agua Prieta, for which *demasias* were sought; but an inspection of the map (R., 210) and the field notes (R., 216-217) will show that not only was the north center monument of the Agua Prieta tract placed south of the international boundary line, and the northeast corner of that grant placed south of the international boundary line, but that also the northwest corner thereof was placed below the line, being at some point on the course between the *lomita pequenita* and the *monton de piedras* (R., 210), and thus showing that the entire Agua Prieta tract, as located by the Rosas survey, is within Mexican territory.

That this location entirely south of the international line was entirely satisfactory to all parties concerned is shown by the concluding recitals of this survey, where it is said (R., 218): "The adjoining owners, who were present, and the parties in interest were satisfied with what had been done. The municipal president of the towns mentioned presented me an official statement of their satisfaction, which is aggregated to the proceedings."

These proceedings were, under date of July 22, 1880, transmitted to the district court for further action, and thereupon an order was given (R., 219) for parties opposing the proceedings to appear and show cause why the *demasias* (overplus) should not be adjudicated to the denouncer.

From the entry dated Guaymas, July 7, 1887 (R., 220), it is apparent that in response to this edict an

adverse suit was brought against this denouncement by Citizen Plutarco Elias for himself and in representation of his mother and brothers. This proceeding appears in the record as defendant's Exhibit II, page 349. From that proceeding it appears that this adverse suit was brought by the Eliases on the theory that while the Camous were the owners of the legal area of the grant, being the exact quantity sold by the Mexican Government under the original proceeding, they, the Eliases, by virtue of descent, were entitled to denounce the *demasias* or overplus in said grant. The courts, however, overruled this contention, holding, *first*, that the Eliases were not entitled to any more land in Mexico, having exhausted their rights under the Mexican law to public land, and, *second*, that the privilege of denouncing the *demasias* existed in the Camous by virtue of their ownership of the legal area. This proceeding, as above pointed out, is also instructive as showing that the Eliases in 1886 had no interest that they could sell either to Ely or anyone else.

It thus came about that the adverse proceedings brought by the Eliases against the Camous were concluded favorably to the latter, and on July 7, 1887 (R., 220), the present proceedings were ready for completion. On July 13, 1887, the value of the overplus was fixed (R., 221) at \$8,472.94, and there also appears a certificate (R., 221) to the effect that there had been produced the title papers presented in this case dated December 28, 1836, for the grant of 18 sitios 12½ caballerias comprised in the places called Agua Prieta, Naidenibacachi, and Santa Barbara, and also conveyances

from the Eliases in favor of Messrs. Camou Brothers, by which these gentlemen remained owners of these lands, and also the contract of dissolution of the firm of Camou Brothers, in virtue of which José Camou, son, the petitioner, became the absolute owner of the grant.

On August 5, 1887, the district judge of Guaymas decreed (R., 222) that said lands being monumented, the owner was entitled, under article 5 of the law on public lands, being the law of July 22, 1863 (Hall's Mexican Law, paragraph 617), to a reduction of one-half the price as above fixed.

On August 6, 1887, the liquidation was accordingly corrected by deducting one-half of the value of the land.

It will thus be seen that not only did the owners of the grant in Mexico acquiesce in the fact that the monuments as found by Mr. Rosas correctly limit their grant, but that also by virtue of the existence of these monuments they secured from the Government a reduction of one-half of the purchase price of the *demasias* denounced. It also appears that for the purpose of bringing himself within the other conditions of said paragraph 5 of the law of July 22, 1863, which required not only the existence of artificial monuments, but also possession for ten years or a title translativo of dominion (Hall, 617), Mr. Camou had previously, on July 12, 1887, asked to be allowed to produce testimony as to such possession (R., 224). Thereupon (R., 225-227) the testimony of witnesses was taken on this subject.

On August 22, 1887 (R., 227), the district judge recites as follows:

Having examined the map and proceedings of survey made and executed by citizen Florencio Rosas, in strict conformity with the laws of July 22 and August 2, 1863, the report of the office of the chief of the treasury, which says that it does not know whether or not the public treasury is in possession of the land denounced and in virtue of which, and in compliance with the provision of article 17 of the first of the two laws hereinbefore cited, it was ordered published three consecutive times in the official periodical, *La Constitucion*, and it appearing that within the terms of these edicts opposition was made to the adjudication of this overplus (*demasias*) by citizen Plutarco Elias, for himself and in representation of his mother and brothers, which suit was terminated adversely to the opponent; having examined the last liquidation of the value of said land made by the office of the chief of the treasury, the statement of the promotor fiscal, and everything else set out in these proceedings, this court decrees: First. There is adjudicated in possession and without prejudice to a third party who may have a better right, to citizen José Camou, son, the overplus (*demasias*) of the ranches "Agua Prieta," "Santa Barbara," "Naidenibacachi," "Agua de Baltazar," "Lo del Gato," "Lo de Tomas Romero," and "Lo de las Mesteñas," for 70,607 hectares, 90 ares, 86 centiares (seventy thousand six hundred and seven hectares, ninety ares, and eighty-six centiares), which appear

from the proceedings of survey and corresponding maps. Second. The present adjudication shall have no effect whatever if not first approved by the department of public works, to which, through the executive of the State, a *testimonio* and copy of the corresponding map will be submitted. Third. That the party interested in the land adjudicated shall not be put in possession, and that it is not included in any of the commissions or surveys in the district of Arispe, where it is situated, unless first certified by the office of the treasury, in which it appears that he has paid its value and the stamps affixed to the title.

On October 27, 1887 (R., 229), the department of public works at the City of Mexico, upon considering the *testimonio* of the proceedings in the district court above referred to, noted a discrepancy between the amount of the overplus (*demasias*) reported by the subordinate authorities and the proper amount as shown by the survey and the expedientes of the original grants, and decides that the overplus is only 65,341 hectares and a fraction, and not 70,607 hectares and a fraction, as stated by the surveyor and as appraised by the authorities at Guaymas (R., 221). The department of public works, in the same decision, notes also the following defects in the previous proceedings (R., 229). It declares that the proof upon which was based the reduction of one-half of the price of the lands was not sufficient, for in the first place the ten years possession necessary under the law of July 22, 1863, is ten years prior to the date

of that law, and not ten years prior to the date of taking testimony; and in the second place, although it is shown in the *testimonio* that the land has been monumented at all the angles, this is shown to be false, in that only two monuments had been found by the surveyor—one to the north, on the boundary line of the United States (being the north center monument at the *loma pequeñita*, as above pointed out) at the point where he began the survey, and the other to the south, belonging to the commons (*ejidos*) of Fronteras; and in the third place there was no proof that the adjudication of the *demasias* in question was free from prejudice to companies making surveys of public lands in that vicinity. The matter being remanded to the district court at Guaymas for further proceedings upon this decision, a recalculation of the area of the *demasias* was made (R., 232), resulting in the determination that the *demasias* or overplus was 70,607 hectares and a fraction. Further testimony was taken in behalf of claimants, showing possession not only for ten years prior to the date of taking such testimony, but also extending back to the date of the grant in 1836 (R., 233–236).

Thereupon (R., 236) Mr. Camou submitted his cause upon the new record showing the amount of *demasias* finally determined by the surveyor, the length of his possession, the fact that the adjudication would not prejudice the rights acquired by the surveying companies, and the fact that while it was true that in the execution of this survey only two monuments on the

ground had been found (one of them, as will be recalled, being the north center monument) this objection was met by the fact that the frontier of the State had been for a long time subject to the incursions of the Apaches, rendering it impossible, when monuments were destroyed, to replace them immediately (R., 236-237). This proceeding was thereupon transmitted to the department of public works, with the result that on January 30, 1888 (R., 228, 238), a title for said demasias was issued by the President of the Republic in favor of Mr. José Camou, son, for the demasias denounced, the amount paid being \$4,236.47 (R., 238). The receipt of Mr. Camou for this title, dated April 6, 1888, appears in the record, page 238.

This proceeding establishes not only the fact that the grant is entirely within the Republic of Mexico, when surveyed by outboundaries, but also that the Mexican Government satisfied in full the claim to the legal area mentioned therein. The denouncer did not pay for the area covered by the title, which was 18 sitios $12\frac{1}{2}$ caballerias for one title (the Agua Prieta, Santa Barbara, and Naidenibacachi title) and $10\frac{1}{3}$ sitios $3\frac{1}{3}$ caballerias for the other, but paid only for the balance of the total area after deducting the area covered by the title (R., 231-232).

The Government also introduced in evidence on the trial of the cause (R., 241-254) a certified copy of the expediente of denouncement of a tract of public land, adjudicated to Josefa Rodriguez, Maria Bustamante y Salazar, and Refugio Miranda, and amounting to 3.9

sitios, or 16,920 acres, situate *between the north boundary of the Agua Prieta grant and the international boundary line.*

This proceeding was initiated on May 4, 1881 (R., 254), when the parties above named made a petition alleging that "there are situate between the ranches of Agua Prieta and Naidenibacachi on the south and the line of the United States on the north some vacant public lands, and that being interested in settling said lands for the purpose of exploiting the different branches of wealth they contain, with the right which the law of July 22, 1863, concedes to them, they formally denounce, and to the extent of 2,500 hectares for each of them, the tract of land described, agreeing to pay the value of the land at the proper tariff price, and asking for the survey thereof."

On May 21, 1881, this denouncement was admitted and one Rosalio Banda was appointed to proceed to make the survey, after citation of the adjoining owners and in presence of their title. On May 4, 1881, two of the petitioners, Josefa Rodriguez de Valencia and Maria Bustamante (R., 255), had executed a power of attorney to Juan P. M. Camou (who, it will be recalled, was interested in the Agua Prieta tract) to represent them in making and prosecuting the denouncement of this land between the ranch of Agua Prieta and the international boundary line. On May 21, 1881, the denouncement referred to was admitted without prejudice to a third person who represents a better right, and the surveyor, Mr. Banda, was appointed to proceed to

make the survey, but Mr. Banda being absent there was substituted for him, as surveyor, Francisco Dublé, on petition dated June 28, 1881, by Juan P. M. Camou, representing the petitioners, as above stated. (R., 257-258.)

Pursuant to the terms of his appointment, Mr. Dublé, on June 20, 1881, issued summons to the adjoining owners, José Maria Elias, owner of the ranch of San Pedro; Pascual Camou, owner of the ranches of Agua Prieta and Naidenibacachi, and Jesus Maria Ainsa, representing the lands surveyed to one Rochin and associates, situate to the east of the Agua Prieta tract (see map Cochise County, R., 458), to be present on the 24th day of July, and at the northwest corner of the land of Mr. Camou to defend their boundaries with their titles.

Mr. Pascual Camou, the owner of the Agua Prieta grant, attended (R., 261-262), but Mr. Elias, representing the San Pedro grant, was not present, but sent a communication (R., 262), stating that he did not believe there was any vacant land between his ranch and those of Mr. Camou. The survey proceeded on July 24, 1881 (R., 262), when the parties proceeded to the northwest corner of the land of Mr. Camou, on the boundary line of the lands of San Pedro. Mr. Ainsa, representing Rochin and associated interests on the east side of the lands sought for, and Mr. Pascual Camou, representing the Agua Prieta interest, were in attendance, and the survey was started upon the monument known by the name of "pile of stones," from

which there was traced a line running N. $29^{\circ} 30'$ W., which at a distance of 4,000 meters reached the international boundary line. The pile of stones, as shown by the plat embodied in these proceedings (R., 252-263), was the northwest corner of the Agua Prieta, Santa Barbara, and Naidenibacachi grants, which is by these proceedings thus shown to be 4,000 meters south of the international boundary line. After encountering the international boundary line the survey was run true east 43,700 varas, ending at a monument on the American line, which was taken for the limit on the east of the vacant lands which were being surveyed. This monument, as is shown by the plat (R., 252), is in the immediate vicinity of the Cerro Gallardo, and is evidently international monument 82, which was international monument 19 on the Emory survey.

The survey was resumed on the next day (R., 263), when a measurement was taken from the said international monument to the *northeast monument of the lands of Mr. Camou, on the Gallardo hill (cerro)*, which was found to be at 920 meters from the American monument, on a course S. 5° E. Thus, the Mexican surveyor, in a proceeding to which the owners of the Agua Prieta grant were parties, fixed the northeast corner of that grant not at College Peak, miles within the American territory, as contended by Mr. Bonillas, but on the slope of the Gallardo Peak, and at a point about a half mile south of the international boundary line.

Continuing the survey (R., 263) from the northeast corner of the Camou or Agua Prieta grant, which was

the southeast corner of the public land sought to be secured, a line was run along the north boundary of the Camou lands on a course S. 79° W. for a distance of 13,140 meters, ending at the little hill (*lomita*); whence on a course S. $69^{\circ} 30'$ W. the line was continued to the starting point. The attention of the court is called to the fact that this little hill or *lomita* monument is the same which has been encountered in the discussion of this cause twice before—once as the north center monument of the Agua Prieta original survey; and second, as the north center monument of the survey made by Mr. Rosas of the Agua Prieta grant on the denouncement of the *demasias* initiated on April 22, 1880, when this monument is spoken of as being the one well known monument of the Agua Prieta grant (R., 217). The proceedings further recite that these last two lines were *traced in agreement with the map and titles of his lands which Mr. Camou presented* (R., 263), and conclude with the statement that the operations of this day were concluded, there being present as attending witnesses *Mr. Camou, as owner of the coterminous lands and as representative of the parties in interest*, and Mr. Jesus Ainsa, in representation of the vacant land surveyed for Mr. Cirilo Rochin and sons. Mr. Camou's name appears affixed to this proceeding in acquiescence in this denouncement as public land of what Mr. Bonillas claimed was, after all, Mr. Camou's own land (R., 263).

On July 26, 1881, the tract thus surveyed was divided among the three petitioners, the eastern portion

thereof being given to Mrs. Refugio Miranda, with the following description: "On the west, the lot of Mrs. Bustamante to the extent of 2,100 meters; on the north, the American line to the extent of 26,810 meters; on the east it is bounded by the vacant land surveyed for Rochin and associates and is separated by a line of 920 meters, and on the south it is bounded by the lands of Mr. Camou, limited by two lines, the one, of 13,140 meters, starts from the Gallardo hill (cerro) and ends at the monument of the *little hillock (lomita)*, and the other, of 14,255 meters in length, starts from the *little hillock (lomita)* and terminates at the southwest corner of Mrs. Bustamante."

Said denouncement was thereupon published for three consecutive times in the official periodical of the State, as provided by article 17 of the law of July 22, 1863 (R., 265), citing parties having objection to said denouncement to appear and contest the same. The land was valued by the proper officials at \$840.56 (R., 267); and on March 2, 1882 (R., 270), Mr. J. P. M. Camou, the owner of the Agua Prieta, and acting as attorney in fact for the three petitioners, gave his receipt for the three titles to this property, describing it as *a tract of public land*. And yet Mr. Bonillas says that this was *not* public land. It is very peculiar that if Mr. Camou owned it he was not aware of it, and left this for Mr. Bonillas to discover years afterwards.

The Government also presented in evidence at the trial (R., 359) the withdrawal by Mr. Camou from the consideration of the surveyor-general of Arizona of

the grant now in controversy, referred to in plaintiff's petition (R., 5). The letter of withdrawal addressed to John Wasson, surveyor-general of Arizona, dated July 15, 1880, is in Spanish and a translation thereof appears to have been omitted from the record. It is as follows:

HERMOSILLO, *July 15, 1880.*

MR. JOHN WASSON, *Tucson.*

MY ESTEEMED FRIEND: I reached this city last night, leaving the survey I went to make on the frontier concluded.

Finally, there is no land in American territory, as we believed, and all (that of the two titles) is in Sonora; because of which, the examination of these titles by the Government of that country now has no object, and you can deliver to Mr. Demetrio Velasco the copy in English of the Naidenibacachi which I left.

By this stage of Moreno, and in care of Mr. Velasco, I forward the book which you had the kindness to lend me, giving you a million thanks, for it was very useful to me.

Your ever affectionate friend and obedient servant,

PASCUAL CAMOU.

Thereupon Mr. Velasco, representing Mr. Camou, receipted for the title to the Agua Prieta grant (R., 359), withdrew it from the consideration of the surveyor-general of Arizona, and carried it back to Mexico. Thus Mr. Camou, not only by his acts in assisting and acquiescing in the survey of the *demasias* and in the subsequent survey of public lands between his

line and the international boundary line, placed his land entirely in Mexico, but also by his express declaration withdrawing the grant from the consideration of the only officer provided by the United States for the consideration of grants at that time, and by his express declaration in so withdrawing it that none of it was in American territory, showed that this was not a claim for consideration by any American tribunal, but that it was purely a matter for consideration by the Mexican Government, and that to that Government Mr. Camou looked for the satisfaction of his grant. And yet Mr. Bonillas shows by his survey that Mr. Camou was all the time entitled to 68,530.05 acres in American territory. It is believed the court will be able from the attitude occupied by the Camous in this matter, which has always been one of denial of any claim against the American Government growing out of this grant, to deduce the reason why when appellant Eduardo Camou came into this case at the eleventh hour it was upon a *quitclaim deed* dated after the beginning of the trial.

BRIEF AND ARGUMENT.

The two questions in this case are, *first*, the extent of the grant, and, *second*, its location. It is confidently submitted by the Government, on the second proposition, that the grant, whether one for the quantity named or one by outboundaries, is entirely within the Republic of Mexico, so that a discussion of the first proposition, including the question of the right of the claimants to the *demasias* or excess of the quantity

within outboundaries over the quantity paid for, is not necessary to the present record. A few considerations as to the effect of the title papers on the subject of quantity, however, seem proper as preliminary to the controlling question of location.

I.

In this grant there passed to the claimants the quantity paid for—no more, no less.

(a) This was $6\frac{1}{2}$ short sitios, or about 28,199.66 acres. The area included in the Bonillas survey is 163,799.48 acres. The title papers here presented are not different from the other Arizona grant cases decided by this court. The amount that passed to the grantee was the number of sitios just stated.

Ainsa v. United States, 161 U. S., 208.

Ély's Admr. v. United States, 171 U. S., 220.

Perrin v. United States, 171 U. S., 292.

United States v. Maish, 171 U. S., 277.

(b) It was sought in the court below to differentiate this case from those just cited, on the contention that the title papers make this the grant of a place with the boundaries named in the original petition of July 21, 1831, and not a grant by quantity. It is not believed that there is any force in this contention.

The fact that a general description of the land by natural objects is given in the original petition was nothing more than a designation of the particular locality within which the quantity purchased was to be located. None of the monuments of the survey, even

as located by Bonillas, reach to the objects named. In fact the only one of the objects named in the petition as to which there is any proof of location is the Chiricahua Mountain range. There is no proof of the location of "the lands of the Sinaloas, the mountains of Coaguilyona, or Cabuyona, and the lands of the Ians" (the last named being in the title papers *Saus*), and there is apparently no knowledge as to their location; so that if the grant were one by natural objects, the claim would still fail for lack of proof as to the situation of the objects. The location of the Chiricahua Mountains is well known, but no portion of the Bonillas survey goes near them. It is claimed by plaintiffs that the northeast corner of his survey at College Peak is at these mountains. On this proposition, however, the maps are against the claimants. An examination of any of the official maps of Arizona will show that College Peak is at a very considerable distance from the Chiricahua Mountains, which run from northwest to southeast and come out near San Bernardino, and are not within miles of any point on the boundary of the Bonillas survey. [See map Cochise County (R., 358); also map of Territory of Arizona, issued in 1897 by the General Land Office.] If it was the intention to grant this as a tract by name, with the boundaries just cited, the measurement of the tract, which was made with great care, and the recital of quantity, which is made with great reiteration, would seem to have been empty formalities. If

it be said, however, that the purpose of the measurement was to ascertain the area within the natural objects so as to afford a basis for fixing the purchase price, it is passing strange that the original surveyor did not go to a single one of these objects. At the present day, if it be desired to find out the number of acres within given natural objects the method promptly pursued is to measure to and between those objects and to calculate the area upon the basis of the distances and courses. In this case, however, nothing of the kind was done. The surveyor in 1835 does not mention having gone to lands of the Sinaloas in running to the south, or the mountains of Coaguilyona or Cabuyona in going east, or the lands of the Ians or Saus in going west, or the Chiricahua Mountains in going north. Had he been measuring to either of these points to ascertain the area within them he would inevitably have mentioned them in his survey. The fact that they are nowhere referred to after we leave the petition shows that they were mentioned simply as terms of general description and as indicative of the locality and general outlimits within which the quantity purchased was to be laid off.

II.

This grant, if considered as one for the quantity named, is entirely within the Republic of Mexico.

The center point of this grant is shown to be at a small lake called Agua Prieta, located about 18,000 feet, or over 3 miles, south of the international boundary. The *expediente* says that the grant measured 100

cords, or 2.6 miles, from the center to the north center monument. Thus, the grant when laid off accurately, according to the quantity paid for and with the measurements stated in the *expediente*—the method indicated by this court in Ely's case as the proper one for location—is entirely south of the line. No portion of the *cabida legal* is in the United States. On this point there can be no issue raised by claimants, as the testimony of Mr. Bonillas (R., 2, 21), as well as his map (R., 24), shows this to be the fact. To the same effect is the testimony of Messrs. Flipper and Tipton, for the Government (R., 33-61).

III.

The grant laid off according to the natural objects and without regard to quantity is entirely south of the international line.

It was upon this issue that most of the oral testimony at the trial was taken. All of this has been hereinbefore abstracted and much of it has been already discussed. At the risk of repetition it seems proper to recall to the attention of the court some of the main points in that testimony showing the grant to be entirely south of the international line.

(a) The north center monument of stone is recited to have been placed on "a very small hillock fronting Saddle Pass to the east." Bonillas was unable to find any such monument, for the reason that instead of looking for it at approximately the distance from the center mentioned in the titles he looked for it 8 or 10 miles away. Proceeding on the assumption that when

the surveyors say 100 cords they mean 400 or 500—and this notwithstanding the fact that the Agua Prieta Valley is almost level, and thus capable of accurate surveying—he necessarily failed to find facts to fit his theory. The agents of the Government, however, testified that following up the valley they found at the end of about 3 miles from the center, and almost due north therefrom, an old monument of stones on the top of a very small hillock. This hill is directly in front of the pass at Gallardo Peak, which is called the Saddle Pass in the survey of the grant made by the Mexican Government on the denouncement of the *demasias*, and which will be hereinafter discussed. It is thus a monument according entirely with the *expediente*, against no monument at all in the Bonillas survey, and must thus be accepted by the court as the north center. It also has the merit of being the same monument located by the Mexican surveyor Florencio Rosas as the “well-known” north boundary of the grant upon the survey made by him on June 28, 1880, in the presence and with the cooperation of all the interested parties (R., 217), for the purpose of ascertaining the amount of land within the boundaries preparatory to payment for the *demasias*. And this location was also adopted and followed by the Mexican surveyor Francisco Dublé, when, in 1881, in the presence of and with the assistance of Mr. Pascual Camou, the owner of the Agua Prieta grant (the latter also appearing as attorney in fact for the denouncers of public land between his Agua Prieta grant and the international

boundary line), Mr. Dublé found the "little hillock" (*lomita*) at precisely the same point as Rosas, Flipper, and Tipton, and at the point "in agreement with the map and titles of his lands which Mr. Camou presented" (R., 263).

(b) For the northwest corner, which is a "small hill" (*cerrito*), Bonillas went into the Mule Mountains. Had he found the north center monument, to which the Government's witnesses have testified, and thereupon faced due west, he would have discovered on the horizon, at the north end of the Naidenibacachi Mountains, which constitute the west wall of the grant, a number of small hills. The most northerly of these is the natural northwest corner of the grant, since it is at the north extremity of the object constituting the west boundary, just as the pass at Gallardo is at the north end of the mountains constituting the east boundary. Between these two mountain ranges lies an almost level valley 15 or more miles in width and in which the grant was sought. It is the contention of the Government that this northernmost hill is the northwest corner of the grant. As the testimony shows that they are all south of the international line, although very close to it (R., 55-62), a line from the north center to the northwest corner would throw the west half of the grant entirely below the line.

(c) The attention of the court is also called to the map and field notes of the survey made by F. W. Oury on behalf of claimants (R., 6, 186). The difference between this survey and that executed by Bonillas as

to the north boundary, as well as the other boundaries, will be at once remarked, and clearly shows that from claimants' standpoint the location of the grant is purely a matter of conjecture, varying with every new survey. Mr. Oury found a north center monument a short distance north of the international line. Mr. Bonillas found none. The former found 43,499 acres of this grant in American territory; the latter found 68,530.05 acres. As a matter of fact, however, neither Oury nor Bonillas is correct. The north boundary of the Agua Prieta tract never went north of the international line.

(d) Coming now to the northeast corner, it will be found that this is located by the *expediente* at "a small hillock (loma) to the right and near two others that are higher near Saddle Pass." Such a hillock is found near Gallardo Peak (R., 41) and there is a pass on both the north and the south sides of that peak. There is no oral evidence from those living in the locality that this is called Saddle Pass. Neither is there evidence for claimants from any one, except Bonillas, who has never lived nearer to the locality than Nogales, a hundred miles away, that the northeast corner shown on the Bonillas map is so called. In view of the fact that claimants introduced witnesses who live near the locality, among them Eduardo Camou, one of the claimants and a resident of the very ranch in controversy, it is peculiar that no attempt was made to show that the pass near College Peak was known as Saddle Pass. The pass claimed by the Government to be

Saddle Pass runs between a solitary *cerro*, called Gallardo, and a range of mountains commencing a short distance away and running northward. To one inclined to studies of nature the appearance of this pass lying between Gallardo as the pommel and the mountain sloping upward a short distance away is not unlike a saddle when viewed from the west. There is as much ground for calling it "Silla Pass" as there is for so naming the other to the north. That it is actually so called is shown by the plat and survey of this grant made under the direction of the Mexican Government and at the instance and with the participation of the owners of the Agua Prieta grant in 1880-1886, where this pass is declared to be the *Puerto de la Silla*, or Saddle Pass. Upon this point the attention of the court is recalled to the Rosas map (R., 210) showing "Cerro Gallardo in the Puerto de la Silla;" also (R., 217) to his field notes of that survey mentioning "the summit of Gallardo hill (*cerro*) in Saddle Pass, *which the titles call for*;" also to the field notes of the Dublé survey of July 25, 1881, where "the northeast monument of the lands of Mr. Camou" is located "on the slope of the Gallardo hill (*cerro*)" (R., 263, and plat of same survey, R., 252).

(e) Claimants contend, however, that the pass at Gallardo marks not the northeast monument of the grant, but the east center monument, and this for the reason that "the old road from Santa Cruz to San Bernardino" passes at Gallardo, and because that road under the titles marks the east center monument. The

proper translation of the titles on this point is that the east center monument is "on a high hillock (loma), which is to the right of the pass where the old road passes from Santa Cruz to San Bernardino." It is contended by claimants that the main road from Santa Cruz to San Bernardino runs through the pass at Gallardo now and has done so for years; *therefore*, it so ran at the date of the grant. It is to be noted, however, that the road referred to in the titles is "the old road," not the road then in existence. Even if the claimants had established that the traveled road between those points ran by Gallardo at the time of the grant, it would still be far short of proving that its east center was at Gallardo. The title locates that center with respect to the old road, thus indicating a distinction between an old road and a road then in common use. This old road could not have been the Gallardo road for the reason that that road is shown by abundant historical evidence to have been opened only in 1846 by Lieutenant-Colonel Cooke, the diary of his expedition in evidence showing that it was cut through mesquite and made passable for traveling only with great difficulty (R., 337-339). That this was the first wagon road through that country is shown by the testimony of witness Gavino Ariaga (R., 96); before that time all travel was by trails. Therefore, even if in 1835 there was a trail from Santa Cruz to San Bernardino via Gallardo—even if *the* traveled trail between those points then went thus—the question still remains, Where was the "old road" or "old trail" mentioned in

the survey of 1835? This, it is contended by the Government, the title papers fix at what is known as the Misa Pass, to the right (south) of which is found a high hillock (*loma*) conforming to the titles (R., 41-42.) This pass is 3 miles south of Gallardo and as many north of the Ceniza Pass, at which latter the southeast corner is confessedly located. A few of the reasons supporting this position will now be presented.

(f) That such pass exists as the Misa Pass is abundantly shown by the proofs. Special Agents Tipton and Flipper testified fully to the character of the pass, to the fact that they in company with the writer had ridden through it in a carriage a month before the trial, and to the fact that there is water on it, thus making it the preferable method of getting through the mountains, since there is no water on the pass running by Gallardo (R., 39). The proof is also abundant that there is an excellent wagon road following the pass and leading toward Cabuyona and Fronteras on the west of the mountain and to San Bernardino on the east of the mountain. Claimants contend, however, that there was no *wagon* road there up to a few years ago. The appearance of this road at the present time, as described by the Government witnesses, is such as leads to the belief that it has been in use for many years, notwithstanding the testimony of Cameron, Camou et al. *contra*; but assuming that the wagon road has been only recently constructed, that does not affect the proposition that a trail—an "old trail" in 1835—went through that pass; and that travelers from Santa

Cruz to San Bernardino did so go at an early date is a matter of great probability. As is historically known, up to within a few years the country about Agua Prieta has been the abiding place of hostile Indians, and travel from the earliest times between Santa Cruz and San Bernardino has been attended with the greatest difficulty and danger. This danger and difficulty increased with each mile farther north. The Spaniards held a reasonably secure position southward, but from what is now the international line and thence to the north for many leagues the Apaches were almost the undisputed possessors of the soil. Thus, in traveling east and west it was advisable—indeed, necessary—that the route taken should be as far southward as possible. If a *presidio* or garrison existed between the starting and objective point, it was always thought best to keep within the curtilage of such a settlement, even if the journey thereby became a little longer. Time was of little value as compared with life—and the Apaches were implacable foes. These very conditions existed as to travel between Santa Cruz and San Bernardino in the early days. By taking a southern route from one place to the other the Indians were kept at a distance and by such a route the traveler passed through Fronteras, an important *presidio* from the earliest times and the only one in that section of country (R., 40). Such a route exists even at the present day (R., 41), when the north route has been made entirely safe by the strong arm of the American Government. In going via Fronteras to San Bernardino, or to Santa Cruz via

Fronteras, the shortest journey is by way of this Misa Pass and not miles away to the north around Gallardo (R., 96); and it is entirely reasonable, probable, and to the unprejudiced mind conclusive that that was the method of travel when the "old road" or trail was in use prior to 1835. Nor would such a route, as suggested by counsel for plaintiffs on the argument of the case in the court below, have subjected the traveler to dangers of ambuscade that he would have avoided by going on the longer route via Gallardo. The trail or road through Misa is no more exposed to ambuscade than that contended for by claimants around the north side of Gallardo; both were through the mountains, but the Misa road was much the less exposed to danger in that it was farther south and shorter and thus more easy of access to and from the soldiery of the presidio of Fronteras, and in addition is through a pass that is practically a narrow valley (R., 40).

(g) The Government's position that the old road of the title papers ran through Misa Pass, and that the east center of the grant is thus there, rests not alone upon theory, however strong and plausible, but upon the plain statement of the *expediente* and the principles of pure mathematics. The position of the southeast corner is uncontroverted. It is claimed to be located at and was found at Ceniza Pass, and the Bonillas map shows it to be there. The Government, after investigation, accepted this as a proper location. The *expediente* description of the location of this southeast corner is as follows: "At the foot of the *first pass*

which is to the right of the point where the cross monument of said course ended." The word "right" as thus used means "southward," the observation being taken by a surveyor going eastward from the center. The southeast corner is thus at the first pass south of the east center monument. Suppose, however, that we locate the east center where the claimants have put it—at Gallardo Peak. There will be *two* passes between it and the southeast corner, one on the south side of Gallardo, along which the wagon road to San Bernardino now runs, and another through the Misa Pass, through which a wagon road also runs. But as the *expediente* says the southeast corner is at the *first* pass south of the east center monument, the Bonillas location is thereby erroneous and must be rejected. If, however, the east center be considered as located to the right of the Misa Pass, this makes the pass at which the southeast corner is located the first pass south of the east center, as stated in the *expediente*. Counsel for claimants recognized on the trial the dilemma in which the existence of this Misa pass placed them and sought to avoid it in the assertion that no such pass existed. How poorly they succeeded, in the face of the physical facts and the positive testimony of Messrs. Tipton and Flipper, is clearly developed by the record. The truth of the matter is evidently that Bonillas, either intentionally or otherwise, overlooked this pass in making his remarkable survey and was ashamed to admit it on the trial. With the positive proof of its existence contained in the record, the last vestige of plausibility in his survey is destroyed.

(h) Upon the proofs just discussed the Government has clearly established that this tract lies entirely below the international line. It is more than a coincidence that the Mexican Government and the grant owners themselves have in times past reached the same conclusion. This has been heretofore alluded to, but a few additional considerations remain to be here noted; and preliminary to this, the attention of the court is called to the fact that upon the record the plaintiff, Santiago Ainsa, administrator, has no interest in the grant authorizing him to bring this suit. Ainsa claims under certain Eliases, descendants of the original grantees by various deeds presented in evidence, the earliest dated December 24, 1886 (R., 165). In 1862, however, the ancestors of the Eliases, who conveyed to Ainsa's intestate, Mr. Ely, mortgaged all their interests to the Camou Brothers, of Guaymas (R., 271). In 1869 the testimony of the Eliases was taken in the Mexican courts, showing that the Camous had succeeded to all their rights in this grant (R., 276-282). On a subsequent denouncement of *demasias*, instituted by the Camous, the same Eliases again contested their rights, ending with a decision in favor of the Camous and an adjudication that the Eliases had no interest in the grant. (Defendant's Exhibit II, R., 349-357.) These proceedings went to the ownership of the whole title, and established that the Eliases, under whom Ainsa deraigned title, were without title when they conveyed to him, and thus Ainsa, administrator, at the time he instituted this suit, was without title. Counsel for

claimants, recognizing the force of this contention, secured permission, after all the testimony had been taken in the cause, to amend their petition by making Eduardo Camou, who had previously testified as a witness for claimants, a complainant. (R., 26.) The latter thereupon presented his quitclaim deed from Juan Pedro Camou, dated only a few days previous. There is nothing in the record to show how Juan Pedro Camou secured title from Pascual Camou, the owner of the premises in 1880-81, so that there is no title shown, even in Eduardo Camou, enabling him to prosecute the suit, and the cause should be dismissed on that ground. But if it be assumed that Juan Pedro Camou and his grantee, Eduardo Camou, succeeded to the rights of Pascual Camou, they took such rights burdened by what Pascual Camou had previously done affecting the location of the grant and are bound by his acts. This branch of the case will therefore be discussed (the Elias people being eliminated) as pending upon the complaint of Eduardo Camou deraigning title from Pascual Camou and holding such title subject to all the burdens placed thereon by said grantor.

(i) This claim having been originally presented by one who had no title to the premises, the rights asserted under it must be adjudged by the court as of date when some one having title appeared to invoke the jurisdiction of this court. Considering this claim therefore as presented by Camou in May, 1899, and admitting *arguendo* his right to prosecute it, it is obvious that so far as it is a mere imperfect or equitable claim it is

barred by the two years provision of the act of 1891. Whatever may be said of the claim to the *cabida legal*, which is confessedly in Mexico, it is certain that the claim to the *demasias* is at best the assertion of an imperfect or inchoate title and therefore barred.

(j) This claim was presented at an early date to the surveyor-general of Arizona by the Camous, the owners of the grant. On July 15, 1880, Mr. Camou withdrew the claim from the consideration of the surveyor-general (R., 359), in a letter, in which he says: "Finally, there was no land in American territory, as we believe, and all (that of the two titles) is in Sonora, because of which the examination of these titles by the Government of that country now has no object."

This admission by claimant Camou's predecessor in title is binding on him. It also explains the reason why Juan Pedro Camou never filed before the court a claim for this property and never joined in the suit already filed, and also why the deed he gives and upon which his son at this eleventh hour comes to the rescue of Mr. Ainsa is a mere *quitclaim* for the portion of the property lying north of the line.

(k) Not only have the owners of this property thus declared that none of it is in the United States, but that this is the status of the property has been agreed upon by the Government of Mexico and the owners in a proceeding for the denouncement of the *demasias*. The attention of the court is respectfully recalled to the *testimonio* of denouncement of *demasias*

for this and other tracts, initiated April 22, 1880, and introduced as defendant's Exhibit A. (R., 212.) An examination of that proceeding and the plat attached thereto will show that the *cabida legal*, or amount sold, was there declared to be $6\frac{1}{2}$ *sitios*; the total area to be bounded on the north by a line some distance south of the international boundary, and the northeast corner of the grant to be not at College Peak, but at Gallardo Peak, the point contended for by the Government. It will be noted, further, that the north center monument in that survey is located exactly where Special Agents Tipton and Flipper testify they found it, and the Saddle Pass also at the point claimed by the Government's witnesses. This survey, with *cabida legal* and *cabida total* so laid out, was approved by the Federal courts at Guaymas, was approved by the department of public works at the City of Mexico, and, finally, patent covering the *demasias* so ascertained were issued to the Camous by the President of the Republic himself. (R., 238.) The acceptance of this survey and this patent without objection, but with every evidence of acquiescence and approval, forever precludes the Camous, or those deraigning under them, from asserting that that survey is wrong.

(l) The Mexican Government further declared the *situs* of this property when in 1881-82, on the application of three parties, it had the tract lying between the north boundary of this grant and the international line surveyed as public land of the Mexican nation and thereupon issued patent therefor as public land

(R., 254). That survey retraced the north line of the Agua Prieta, fixing its north center monument exactly where the survey of the *demasias* proceeding had placed it and where the investigation of Messrs. Tipton and Flipper has since located it. The same survey fixes the northeast corner at Gallardo, just as contended for by the United States. Throughout this whole proceeding there was present Mr. Pascual Camou, then owner of the Agua Prieta grant and under whom plaintiff Camou derails title; and he (Pascual Camou) not only acquiesced in this proceeding fixing his north line in Mexico and declaring to be public domain the land *between* his line and the international boundary, but actually appeared as attorney in fact for the three persons upon whose petition it was being done (R., 254-270). It is difficult to imagine a stronger case of estoppel.

(m) In the court below claimants' counsel objected to these proceedings as irrelevant—upon what theory it is hard to conceive. As a proceeding *in rem*, and as thus expressive of the attitude of the former Government toward property within its territory, and toward a grant which it had made, similar proceedings in the Nogales case were considered by this court of controlling weight. (*Ainsa v. United States*, 161 U. S., 208.) They are, however, clearly admissible as declarations against interest by the parties owning the property, and thus binding upon their grantees. Plaintiff Camou derails title under these parties (if he has title at all) by deed dated long subsequent to

the conclusion of the proceedings and the issuance of the patents based thereon. Their proceedings are *his*, and he is as effectually bound as though he had been the denouncer of the *demasias* in 1880 himself, or had in person been present at the above-mentioned proceedings of 1881-82. Claimant Ainsa (who, however, has no standing here) is also bound since the Eliases, from whom he deraigns title, were parties to this same proceeding, having come in as litigants with the Camous over the right to denounce the *demasias*. This fully appears in defendant's Exhibit H. (R., 349.)

Upon the whole record it is not believed that there can be any doubt that the grant, when considered one by outboundaries, is entirely within Mexico.

IV.

This grant has been satisfied by the Mexican Government south of the international line, and the claim should therefore be rejected.

It was held by this court in *Ainsa v. United States* (161 U. S., 234), as follows:

We have referred to the proceedings of 1882-1886 in Mexico as furnishing persuasive evidence of the proper construction of this grant under Mexican law, and it may be further observed that the adjudication of the overplus required the location of the $7\frac{1}{2}$ *sitios*, which location Mexico, as the granting Government, assumed it had the right to make and made out of the land within its jurisdiction. In this way the grant was satisfied by the receipt of all the

grantees had bought and were entitled to under the Mexican law, the result as to the overplus inuring to Camon's cotenants by the terms of his petition.

This principle was reaffirmed in *Ely's case* (171 U. S., 240), where, in discussing the Ainsa case, it is said:

In that [the Ainsa] case it appeared that while the boundaries of the survey extended into the territory ceded by Mexico to the United States the grantee had taken and was in possession of land still remaining within the limits of Mexico, to the full extent which he had purchased and paid for, and therefore no legal or equitable claim existed against the United States in reference to the land within the ceded territory.

These cases are absolutely controlling upon the record now under discussion. Here as there the quantity purchased and paid for has been satisfied by the Mexican Government out of lands within its jurisdiction on the application of claimant's predecessors in title. In this grant the area purchased and paid for was $6\frac{1}{2}$ short *sitios*. In the *demasias* proceeding of 1880-1886 (R., 212-231) the Mexican Government found the total area within the Agua Prieta grant and its associated grants to be 68.9 *sitios*, the area covered by the title (including the Agua Prieta $6\frac{1}{2}$ short *sitios*) to be 28.7 *sitios*, and the *demasias*, or difference between the total area and the legal area, to be 40.2 *sitios*. Acknowledging Camou's ownership in the 28.7 *sitios*

by virtue of his ancient titles, the Mexican Government sold and patented to the denouncers the overplus of 40.2 *sitios*. As has been heretofore pointed out, every foot of said legal area of 28.7 *sitios*, as well as of said total area of 68.9 *sitios*, is within Mexican territory. The Mexican Government having out of its own lands satisfied its obligations growing out of one of its grants, the United States is under no obligation, legal or equitable, to satisfy that obligation a second time.

It is respectfully submitted that upon all the grounds herein urged the judgment of the Court of Private Land Claims was correct and should be affirmed.

Respectfully submitted.

JOHN K. RICHARDS,

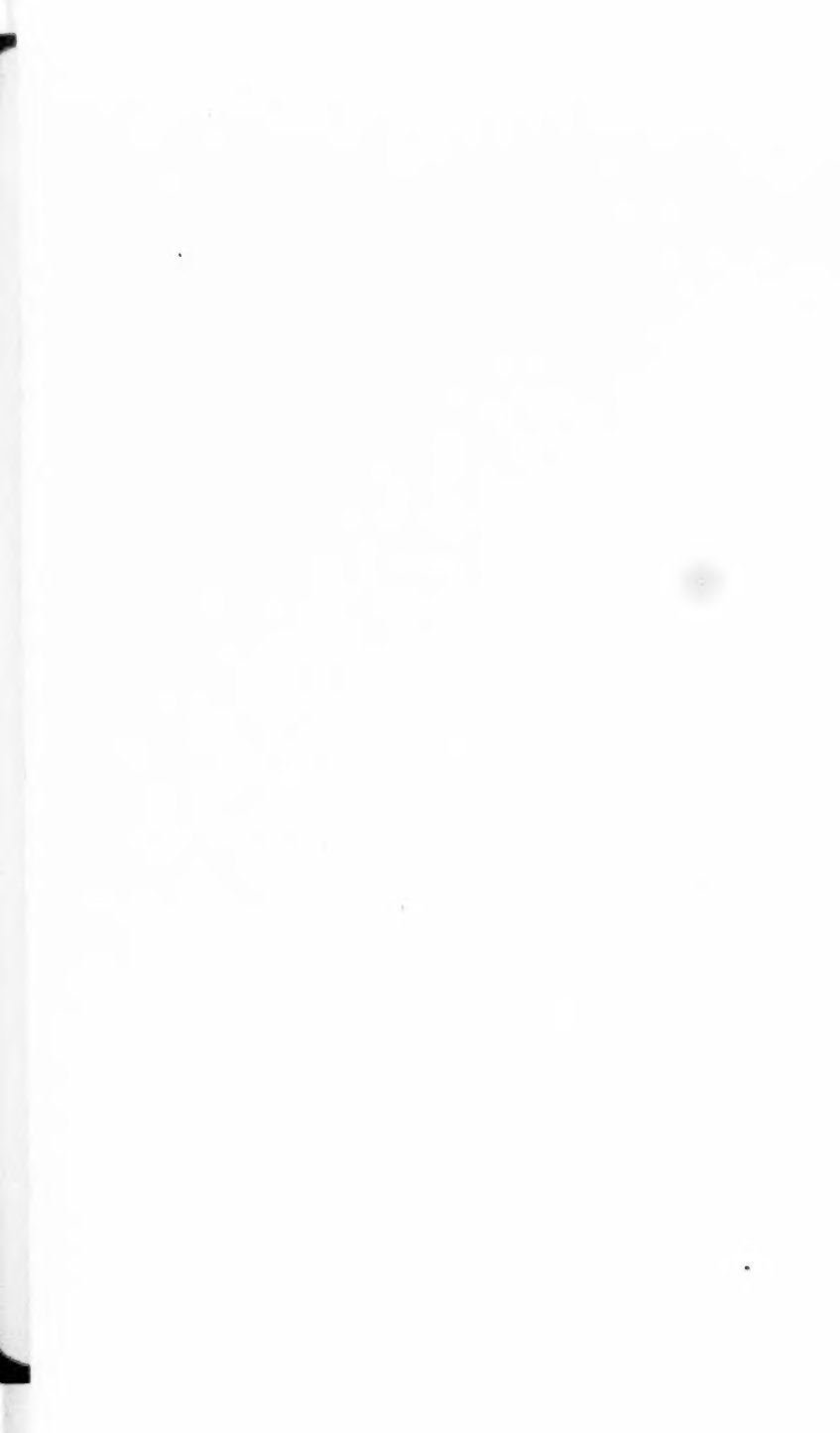
Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

WILLIAM H. POPE,

Special Assistant to the Attorney-General.



Supreme Court of the United States.

No. 40.—OCTOBER TERM, 1901.

Santiago Ainsa, Administrator of the estate of Frank Ely, deceased, and Edward Camou, Appellants, <i>vs.</i> The United States.	}	Appeal from the Court of Private Land Claims.
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[March 17, 1902.]

This was a petition filed February 28, 1893, by Ainsa, as administrator, against the United States and one Whitney, for confirmation of the Agua Prieta grant, so called, which he represented he owned by virtue of "a grant title," dated December 28, 1836, made by the Mexican Republic under article eleven of decree No. 70, of August 4, 1824, and a law of the States of Sonora and Sinaloa, No. 30, of May 20, 1825, and other decrees, embodied in sections 3, 4, 5, 6 and 7 of chapter 9 of the organic law of the treasury, No. 26, of July 2, 1834; and that regular and lawful proceedings were had under those laws, by which the Mexican government, December 28, 1836, sold and conveyed the land to Juan, Rafael and Ignacio Elias Gonzales in consideration of \$142.50 and other valuable considerations. The proceedings were set out at length in the petition.

The United States answered, denying the ownership and possession of the petitioner, and alleging that the grant by the State of Sonora was void; that the grant was located within the Republic of Mexico; that it was confirmed in 1882 to Camou brothers by the Mexican government, and lay south of the boundary line; that the *demasias* of the grant was also confirmed to Camou brothers; and that a large area remained between the north boundary of the grant and of the *demasias* and the boundary line, which had since been purchased from Mexico by Camou brothers. February 14, 1899, on which day the cause came on for trial, petitioner filed an amended and supplemental petition, averring "that prior to the treaty known as the Gadsden treaty no resurvey of said grant had ever been applied for or ordered by any one, and that neither the grantees nor their successors in interest had, prior to said treaty, any knowledge or notice that within the said monuments there was an excess of land over the area stated in said title papers, and petitioner avers that the grantees under said grant were, under the laws of Mexico and the State of Sonora existing at the date of said treaty, and for a long time prior thereto had been, holders in good faith of any such excess or surplus, if any such there is, and enti-

tled to occupy and retain the same as their own, even after such overplus is shown, without other obligation than to pay for the excess according to the quality of the land and the price that governed when it was surveyed and appraised; and petitioner further avers that if this honorable court should decide that said sale, as recited in said title papers did not, as petitioner avers it did, convey to the grantees therein all of the said tract of land to the monuments described in said title papers without further payment therefor, he is ready and willing and now offers to pay to the United States of America any amount that may be found to be due from him for such overplus, and also the costs for ascertaining the same, as soon as the amount of the same and the sum due therefor is ascertained."

Petitioner tendered the sum of \$600 in gold in payment of the overplus and \$200 in gold for costs, offered to pay whatever might be adjudged due, and prayed "that upon said payment this honorable court decree that petitioner is entitled to and is the owner of all of said tract of land, as originally surveyed, including said overplus or surplus, and that by said decree he be secured in the possession and ownership of the whole of said tract," &c.

The area delineated on petitioner's maps, as included in the grant claimed, was 163,797.48 acres. The Court of Private Land Claims rejected the claim, and dismissed the petition.

The documents covered three tracts of land called, respectively, Agua Prieta, Naidenibacachi, and Santa Barbara. And it appeared that on July 21, 1831, Juan, Rafael and Ignacio Elias Gonzales petitioned the treasurer general of Sonora, stating that they had cattle and sheep whose numbers they could not feed on the sitios belonging to them, for which reason the stock wandered to the four points of the compass, more particularly toward the waters of the Santa Barbara, Naidenibacachi, Agua Prieta, and Coaguyona, by which they suffered incalculable damage.

They therefore made denouncement of the lands that might be "found to be public lands within the points and waters aforesaid, which are bounded on the north by the Chiricahua Mountains, on the south by the lands of the Sinaloa, on the east by the mountains of Coaguyona, and on the west by the lands of the Saus;" and petitioned that, under the law of May 20, 1825, the denouncement might be admitted, and orders issued for the survey, appraisalment, publications, sale and other necessary proceedings. The petition was referred, testimony taken and report made as to the necessities of the case, and in October, 1831, at Hermosillo, Treasurer General Mendoza appointed Joaquin Vincente Elias, resident of San Ignacio, to proceed to take the legal steps, to "the survey of the said public lands," effecting the measurement, appraisalment and publications as is provided, in the decrees No. 30, of May 20, 1825, and No. 175 of November 20, 1830, &c. In August, 1835, Elias proceeded to execute

the commission, and on September 28 appointed and qualified his assistant measurers and recorders, and commenced the survey of the Agua Prieta tract. He asked "the attorney of Messrs Elias to point out the place they wanted as the center; he did so, fixing a lagoon or pool that is in the middle of a valley called by the same name as the place and the center of all the circumference." The survey then followed and is given at length, and closed as to the Agua Prieta tract thus: "The survey being in this manner concluded, and containing in its area, the calculation having been made with entire correctness, six and one-half short sitios, the party, who assented to what had been done, was cautioned to inform his parties in due time to have monuments of stone and mortar constructed, as is provided." Then came the survey of the Santa Barbara and Naidenibacachi tracts, and they were found to contain an area of "eleven and one-half sitios and twelve and one-half caballerias," which made, with the six and one-half sitios, a total of eighteen sitios and twelve and one-half caballerias. Appraisers were then designated, and the six and one-half sitios composing the survey of Agua Prieta, were valued, one at sixty dollars, as it had a limited water course, and the others at fifteen dollars each, as they were absolutely dry, and the eleven and one-half sitios and twelve and one-half caballerias were appraised, one at eighty dollars, another at sixty, and the rest at fifteen dollars, making a total of four hundred and thirty-two dollars and fifty cents. Thereupon the lands were published for thirty consecutive days at the values fixed, from June 4 until July 3, 1836. The advertisement exposed for sale eighteen sitios and twelve and one-half caballerias for raising cattle, comprised in the places of Agua Prieta, Naidenibacachi and Santa Barbara, surveyed in favor of the citizens Elias, and appraised in the sum of four hundred and thirty-two dollars and four reals. Three public auctions were then ordered and had on September 15, 16, 17, 1836. The advertisement was as follows:

"There are going to be sold on account of the public treasury of the department eighteen sitios and twelve and one-half caballerias of land for the raising of cattle and horses, comprised in the places called Agua Prieta, Naidenibacachi, and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, in the district of this capital, surveyed at the request of the citizens Juan, Rafael, and Ignacio Elias Gonzales, of this town, and appraised in the sum of four hundred and thirty-two dollars and four reals, as follows: The six and one-half sitios, which compose the survey of Agua Prieta, one in the sum of sixty dollars, on account of having a small spring, and the other five and one-half at the rate of fifteen dollars each, on account of their being absolutely dry; and the other eleven and one-half sitios, together with the twelve and one-half caballerias, of which the other two places consist, one in the sum of eighty dollars, one in the sum of sixty dollars, and the others at fifteen dollars each, all of which sums together go to make up the total amount of four hundred and thirty-two dollars and four reals."

The property was sold to the Messrs Elias at four hundred and thirty-two dollars and four reals, the record stating: "On these terms this act was concluded, the said eighteen sitios and twelve and one-half caballerias of land which compose the said places of Agua Prieta, Naidenibacachi and Santa Barbara, situate in the jurisdiction of the presidio of Fronteras, having been publicly and solemnly sold to these interested parties for the said sum of four hundred and thirty-two dollars and fifty cents, at which said lands had been appraised." September 27, the treasurer general directed the parties to be notified to pay the sum in question into the treasury. The title was issued, December 28, 1836, declaring that the purchase money for said "eighteen sitios and twelve and a half caballerias of land for breeding cattle and horses, which are comprised in the places called Naidenibacachi, Agua Prieta and Santa Barbara" had been paid, and granting in the usual terms, the said eighteen sitios and twelve and one-half caballerias contained in those places.

On the trial, Ainsa, administrator, introduced in evidence a number of deeds made by descendants of the original grantees to Ainsa's intestate, ranging in date from December 24, 1886, to January 24, 1893.

The United States introduced a deed of the Eliases, dated July 25, 1862, conveying to the Messrs. Camou of Hermosillo, Mexico, by way of conditional sale, all of the property forming the subject matter of this suit, and also certain proceedings of March 17, 1869, and of November 15, 1880, showing the extinguishment of the equity of redemption.

May 31, 1899, petitioner asked for an order making Eduardo Camou party defendant, and presented a deed from Juan Pedro Camou to said Eduardo, quitclaiming the grantor's interest in the Agua Prieta grant, north of the international boundary line.

In addition to the documents much oral evidence in reference to the surveys was adduced on both sides.

The government introduced a certified copy of the expediente of the denouncement of the *demasias* of the grant made by Camou brothers before the Mexican tribunals by proceedings initiated April 22, 1880. The lands mentioned were the three places of Agua Prieta, Santa Barbara and Naidenibacachi, and four others. The denouncement was admitted by the district judge of Guaymas, May 31, 1880, and a resurvey ordered of the seven tracts, with direction that special care be taken to make the survey of each of the lands separately, and to designate in the minutes of the survey and on the several maps the *demasias* pertaining to each. The parties in interest were summoned and were satisfied with the survey made. In 1887 Plutarco Elias, for himself and his mother and brothers, brought an adverse suit against the denouncement on the theory that the Eliases, though not entitled to the *cabida legal*, were entitled to the *demasias*, but the contention was rejected. The value of the overplus was fixed, and the

judge decreed that the owner was entitled under article 5 of the law of public lands, the law of July 22, 1863, to a reduction of one-half the price as fixed, and it was so liquidated. The final result was the issue, January 30, 1888, of the title to the *demasias* in favor of Camou. The government also introduced in evidence the expediente of denouncement of a tract of public land amounting to 16,920 acres, situated between the north boundary of the Agua Prieta grant and the international boundary line. This proceeding was initiated May 4, 1881; the denouncement was admitted and a surveyor appointed, who issued summons to Elias, owner of the ranch of San Pedro, to Camou, owner of the ranches of Agua Prieta and Naidenibacachi, and to Ainsa, representing the lands surveyed to one Rochin, situated east of the Agua Prieta tract. A survey was had and the tract surveyed divided among the three petitioners, Mr. Camou, the owner of the Agua Prieta grant, acting as attorney in fact, giving his receipt for the three titles to the property, and describing it as public land. The government also put in evidence the withdrawal by Mr. Camou from the consideration of the surveyor general of Arizona of the grant now in controversy in July, 1880.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The amount that passed to the grantee was six and one-half short sitios, or about 28,200 acres, and the court below properly held that the case was controlled by the decisions of this court in *Ainsa v. United States*, 161 U. S. 208, and subsequent cases. It is contended that because a general description by natural objects was given in the original petition this was not a grant by quantity; but the proceedings leave no doubt that that was nothing more than the designation of the particular territory wherein the quantity purchased was to be located. The measurement of the tract was made with great care and the quantity repeatedly recited. Eighteen sitios and twelve and one-half caballerias of land at the three places named were appraised, sold, purchased, paid for, and granted, and no more. The survey of the Agua Prieta tract placed its contents at six and one-half sitios, and of the other tracts, eleven and one-half sitios, twelve and one-half caballerias, which were separately appraised, and while the advertisement was of eighteen sitios and twelve and one-half caballerias comprising the lands of the three places, the valuation of the six and one-half sitios composing the Agua Prieta tract, and the valuation of the eleven and one-half sitios, twelve and a half caballerias, were given separately, although all were sold, paid for, and granted together. The law then in force authorized the treasurer general to grant to old breeders, "who, from the abundance of their stock, need more," the quantity shown to be needed, but the minimum price was fixed by law, and before sale the land had to be surveyed, appraised and advertised, as was done. The Mexican government construed

this grant on the denouncement of Camou as a grant by quantity, and the *cabida legal* was deducted and the *demasias* sold and patented by that government. That lawful area is south of the international boundary line and in Mexico; and as we have just said in the *Reloj Cattle Company v. United States*, there was no legal or equitable claim therefor existing against the United States when this petition was filed.

Assuming that some part of the entire claim lay in the United States, which is not conceded, petitioner on May 16, 1895, by an amended and supplemental petition, prayed the court to award the overplus to him on payment of such amount as might be found due.

The laws of Mexico and of the State of Sonora in respect of *demasias* treated excess over rightful titles as subject to the *jus disponendi* of the government. The possessor did not have title to the overplus, but might acquire it under the circumstances and in the way provided. A possessor does not mean owner. Escriche's *Diccionario de Legislacion y Jurisprudencia*. "Poseedor; Poseedor de buena fe; Poseedor de mala fe."

The second section of the Sonora law of May 12, 1835, No. 51, is given in *Ainsa v. United States*, 161 U. S. 226, though the words "*poseedores de buena fe*" should have been translated "possessors in good faith" rather than owners; and we there said: "It thus appears that the resurvey of grants was provided for to ascertain the excess over the quantity intended to be granted, that unless the excess was more than half a sitio it might be disregarded, and that if it exceeded that, the owner of the original grant might be allowed to take it at the valuation. The application of Don José Elias was for a resurvey of the Casita in order that he might obtain the overplus lands therein on an appraisal, whereas if that ranch had been acquired by purchase *ad corpus*, that is to say, all the lands included by certain metes and bounds, possession delivered and monuments set up, it is not apparent how the necessity for having a resurvey could have existed; and so when in 1882 and 1886, the Mexican government was applied to by defendant Camou, under the law of July 22, 1863, his application proceeded upon the theory that the grant under consideration was a grant of a specific quantity within exterior limits, and what he sought and was accorded was an adjudication of the overplus on paying the value thereof 'in conformity with the tariff in force at the time of the denouncement.'

"Certain articles of the law of July 22, 1863, treat of the ascertainment and disposition of excesses where the indicated boundaries are supposed to cover only a certain quantity of land which, when resurveyed, turns out to be much larger than as described in the titles; and such resurveys had been practiced from an early day and were recognized by Don Elias himself in his application in respect of La Casita. Royal Decree, October 15, 1754, sect. 7, Reynolds' Span & Mex Land Law, 54; Law of July 11,

1834, chap. 9, sect. 3, Id. 187; Law of July 22, 1863, Hall's Mex. Law, 174."

If the excess did not exceed one-half a sitio, it was disregarded. If it did, and the owner did not want it, or it was very great in the opinion of the government, it would be awarded to any one denouncing or soliciting it.

The second and third sections of the law of May 14, 1852, No. 197, were :

"2. *Demasias* are considered to be those that may be found within the true outboundaries of the grant titles, and they shall be excessive when they amount to the third part of the land which said titles may contain.

"3. When the said *demasias* are not excessive, and the possessors apply for them with proof of having sufficient means for stocking them, they shall be adjudicated to them without public auction at the rates in force at the present time. If they should not want them, they shall be adjudicated to denouncers in like manner. Should they be excessive they shall be sold to the highest bidder."

Even when not excessive, the owner of the *cabida legal* was compelled to pay the rates in force at the time of the passage of the law, and by section eleven it was provided that they could not be secured without public auction unless the original expediente was presented to the treasury within one hundred days thereafter. When excessive, they had to be sold to the highest bidder. They were, in short, placed on the same footing as other public lands.

The United States is not subject to suit, except by its consent, and then only within the limits and on the terms prescribed. The act of 1891, in creating the Court of Private Land Claims, did not authorize that court to supervise performance of conditions unperformed, and by subsection eight of section thirteen it was provided that: "No concession, grant, or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent, shall be admitted or confirmed unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any such concession, grant, or other authority to acquire land."

By section twelve, imperfect claims in respect of which no petition shall have been filed within two years, "shall be deemed and taken, in all courts and elsewhere, to be abandoned and shall be forever barred."

It is obvious that this contention cannot be sustained for the reasons indicated, and we repeat what we said in *Ely's case*, 171 U. S. 239: "This government promised to inviolably respect the property of Mexicans. That means the property as it then was, and does not imply any addition to it. The cession did not increase rights. That which was beyond challenge before remained so after. That which was subject to challenge before did not become a vested right after. No duty rests on

this government to recognize the validity of a grant to any area of greater extent than was recognized by the government of Mexico. If that government had a right, as we have seen in *Ainsa v. United States* it had, to compel payment for an overplus or resell such overplus to a third party, then this government is under no moral or legal obligations to consider such overplus as granted, but may justly and equitably treat the grant as limited to the area purchased and paid for."

Decree affirmed.

True copy.

Test :

Clerk Supreme Court, U. S.

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